122-580

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 136.

THE SUN MUTUAL INSURANCE COMPANY OF NEW ORLEANS AND THE HIBERNIA INSURANCE COMPANY OF NEW ORLEANS, APPELLANTS,

vs.

THE KOUNTZ LINE, THE H. C. YEAGER TRANSPORTATION COMPANY, C. V. KOUNTZ TRANSPORTATION COMPANY, THE M. MOORE TRANSPORTATION COMPANY, WILLIAM J. KOUNTZ, AND JOHN W. KING.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 11, 1883.

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1 *Appeal from the District Court of the United States for the Eastern District of Louisiana.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit, Eastern District of Louisiana. In Admiralty.

CITIZENS' INSURANCE COMPANY *et als.*
vs.
KOUNTZ LINE *et al.*
} No. 9953.

Transcript from District Court. Filed May 17th, 1883.

CITIZENS' INSURANCE COMPANY *et al.*
vs.
KOUNTZ LINE *et al.*
} No. 11712.

Libel filed Feb'y 28th, 1881.

DISTRICT OF LOUISIANA:

To the Honorable Edward C. Billings, judge of the district court of the United States for the district of Louisiana:

The libel of the Citizens' Insurance Company of Missouri, the Northwestern National Insurance Company of Milwaukee, the Orient Mutual Insurance Company of New York, the Washington
2 Fire & Marine Insurance Company of Boston, the Sun Mutual Insurance Company of New Orleans, the Crescent Insurance Company of New Orleans, the Rhenish Westphalian Lloyd of Gladbach, the Hibernia Insurance Company of New Orleans, libellants, against the Kountz Line, the H. C. Yeager Transportation Company, the C. V. Kountz Transportation Company, the K. P. Kountz Transportation Company, the M. Moore Transportation Company, William J. Kountz, and John W. King, respondents in a cause of tort, civil & marine.

And thereupon the libellants articulately propound and allege as follows:

1st. That heretofore, to wit, on the 24th day of June, A. D. 1872, William J. Kountz and John W. King, together with three other persons, whose names are not material, because they never participated in the matters and things hereinafter complained of, made a declaration in writing, and recorded it in the office of the recorder of deeds, in the city of St. Louis and State of Missouri, by which writing the persons aforesaid declared themselves a body
3 corporate, by the name of the Kountz line, for carrying freight and passengers as common carriers on the Mississippi

river and the water-tributary thereto, fixing the place of their business at said city & their capital stock at 150 of $100 each share; but no part of said capital stock has ever been paid in to any person for said Kountz line.

2nd. That said Kountz and King became the only agents & officers of said Kountz line, the said Kountz being the president thereof and the said King the general agent thereof, both of the persons aforesaid being the directors of said Kountz line.

3rd. That said Kountz and King, and one John A. Sheble being then the real and substantial owners of several steamboats, respectively named, as follows, to wit: Carrie V. Kountz, Kate P. Kountz, Henry C. Yeager, and Mollie Moore, they surrendered the custody, management, & control of all the steamboats aforesaid to the said Kountz for the said Kountz to carry on for them the said business of common carries at the said city, by the name of the Kountz line, and the said Kountz had the sole control of all the steam-
4 boats aforesaid, and the said King became the agent thereof, and from thenceforth until the 16th day of December, in the year aforesaid, the said Kountz, King, and Sheble carried on the business of common carries at said city, by the name of the Kountz line, and by that name, during the time aforesaid, they made all their bills of lading and advertised all said steamboats and held out all said steamboats to all persons dealing with them as the property of said Kountz line.

4th. That afterwards, to wit, on the 13th day of November, in the year aforesaid, the said Kountz, King, & Sheble, still retaining the joint possession and control of all the steamboats aforesaid, and still continuing to use and employ them in their said business of common carriers, by the name of the Kountz line aforesaid, they, the said Kountz, King, and Sheble, made another declaration in writing and recorded it in the office of the recorder of deeds in said city, by which writing the persons last named declared themselves a body corporate, by the name of the C. V. Kountz Transportation
5 Company, for carrying freight and passengers as common carriers on the said Mississippi river and the waters tributory thereto, fixing their place of business at said city and their capital stock at four hundred shares of $50 each share; and again, on the same day, the same persons made another declaration in writing and recorded it in the office of the said recorder of deeds in said city, by which writing the same persons declared themselves another body corporate, by the name of the K. P. Kountz Transportation Company, for carrying freight and passengers as common carriers on said Mississippi river and the waters tributary thereto, fixing their place of business at said city and their capitol stock at 300 shares of $50 each share; and again, on the same day, the same persons made another declaration in writing and recorded it in the office of the said recorder of deeds in said city, by which writing the same persons declared themselves another body corporate, by the name of the H. C. Yeager Transportation Company, for the

carrying of freight and passengers as common carriers on said Mississippi river and the waters tributary thereto, fixing their
6 place of business at said city and their capitol stock at 400 shares of $50 each share; and again, on the same day, the same persons made another declaration in writing and recorded it in the office of said recorder of deeds in said city, by which writing the same persons declared themselves another body corporate, by the name of the M. Moore Transportation Company, for carr-ing freight and passengers as common carriers on said Mississippi river and the waters tributary thereto, fixing their place of business at said city and their capitol stock at 400 shares of $50 each share; but no part of the capitol stock has ever been paid in to any person for either of said so-called transportation companies.

5th. That said Kountz, King, and Sheble, claiming to be the owners of all the stock of all the aforesaid so-called transportation companies, *and* they elected the said King the treasurer and secretary of all the aforesaid so-called transportation companies, and the said Kountz and King have ever since been the directors of said transportation companies.

6th. That afterwards the said Kountz & Sheble, being still the real and substantial owners of all the aforesaid steamboats,
7 *they* executed certain bills of sale purporting to convey the aforesaid steamboats to the aforesaid so-called transportation companies [in] severalty, as follows, to wit:

The Carrie V. Kountz to the C. V. Kountz Transportation Company, the Henry C. Yeager to the H. C. Yeager Transportation Company, the Katie P. Kountz to the K. P. Kountz Transportation Company, and the Mollie Moore to the M. Moore Transportation Company; and the said Kountz, King, & Sheble, being the directors of all the said so-called transportation companies, united all said so-called transportation companies in the joint enterprize of carrying freight & passengers as common carriers on the Mississippi river and the waters tributary thereto, by the name of the Kountz line aforesaid, and by that name all the aforesaid so-called transportation companies appointed one general agent, to wit, the said John W. King, and occupied one general place of business in said city, and by that name they have always ever since carried on the said joint business of carrying freight and passengers as common carriers; made all their contracts of affreightment with all persons shipping goods or merchandize by said Kountz line, and by that name they have always ever since advertised and held out to the world
8 all the aforesaid steamboats as the steamboats of said Kountz line.

7th. That afterwards, to wit, on the 26th day of January, A. D. 1876, the said Kountz and King caused the said steamboat Carrie V. Kountz to be dismantled, and her engines, boilers, and machinery they caused to be removed and to be put into the hull of the steambeat Paragon, which hull they purchased for that purpose, and the name of that steamboat was then changed and thenceforth ever since has been named and is now known as the steamboat

E. O. Stanard; and afterwards, to wit, on the 17th day of April, A. D. 1878, the steamboat D. H. Rucker was conveyed to the so-called M. Moore Transportation Company; and afterwards, to wit, on the 20th day of May, A. D. in the year last aforesaid, the steamboat General Charles M. Tompkins was conveyed to the so-called M. Moore Transportation Company; and afterwards, to wit, on the 14th day of September, in the year last aforesaid, the steamboat J. B. M. Kehlor was conveyed to the so-called M. Moore Transportation Company, and the said several steamboats, to wit, the D. H. Ducker, General Charles M. Tompkins, and J. B. M. Kehlor, at the several and respective dateslast aforesaid, together with all
9 the said steamboats first above named were, and always ever since have been, employed and navigated under the control and directions of said Kountz and King for and in behalf of all the aforesaid transportation companies in the aforesaid common enterprize of carrying freight and passengers upon the said Mississippi river and the waters tributary thereto as common carriers, by the name of the Kountz line aforesaid, and always ever since all the aforesaid steamboats have been held out to the world as the steamboats of the Kountz line aforesaid.

8th. That on, to wit, the 21st day of May, 1880, at the said city of St. Louis and at East Kinswick, certain goods and merchandize, in good order and condition, described in a certain exhibit hereto annexed and made part of this the 8th article herein, marked Exhibit "A," of the value stated in said exhibit, were delivered by the shippers thereof in the said exhibit named to the above-named transportation companies, by the name of the Kountz line aforesaid, for them to receive the same by the name of the Kountz line aforesaid, and for them by that name to safely and securely carry said
10 goods and merchandize to the port of New Orleans, in the State of Louisiana and the other places in said exhibit named, at the district aforesaid, for certain reward to be paid therefore to them by the said name- Kountz line aforesaid, and there at New Orleans aforesaid and at the places in said exhibit named, for the above-named transportation companies, by the name of the Kountz line aforesaid, to safely deliver the said goods and merchandize, in like good order and condition and without unreasonable delay, to the consignees thereof in said exhibit named, the dangers and perils of the rivers, seas, fire, and collision excepted; and the aforesaid transportation companies, by the name of the Kountz line aforesaid, had *excepted* and received said goods and merchandize for the purpose aforesaid, and then and there it became and was the duty of the above-named transportation companies, their servants, agents, & officers, to take care of said goods and merchandize and to lade the same upon some good, seaworthy vessel, and to carry and deliver the same to the consignees thereof at the said port of New Orleans and other places named in said exhibit, without unreasonable delay.

11 9th. That the respondents, Kountz and King, always had assumed, and at the date last aforesaid they assumed, the right to designate the steamboat of the said Kountz line that should be

employed for any voyage contemplated, and they also assumed to direct the lading of all goods committed to said Kountz line for transportation, and to designate the steamboat upon which said goods should be laden, and said Kountz and King, being the exclusive directors and managers of the business of said Kountz line, caused said goods to be laden upon said steamboat Henry C. Yeager, and caused said steamboat Henry C. Yeager to depart from said port of St. Louis on the day and year last aforesaid, destined for the port of New Orleans, at which time the top seams of said steamboat were so open that persons standing in her hold could easily look through them; that said steamboat was so deeply laden that during said voyage said open top seams were carried near to the water line, and the ordinary motion of said steamboat caused water to run through said open top seams and into the hold of said steamboat; that said

12 Kountz and King caused the said steamboat to depart on said voyage without pumps proper and fit for keeping her free of water, and without a working capstan, and said Kountz and King selected and employed an improper and incompetent person as the master of said steamboat; that said Kountz and King either knew that said steamboat was utterly unseaworthy and unfit to receive said goods and to proceed on said voyage, or their own gross carelessness and negligence prevented them from knowing that she was unfit and unseaworthy for said voyage; that said Kountz and King directed the master of said steamboat to call at East Kinswick, a short distance from St. Louis, and there to take on about 1,200 sacks of corn, and they also directed said master of said steamboat to stop said steamboat at Chester and there to take on board 300 barrels of flour, and in obedience to their orders said steamboat was stopped at the places named, and said corn and flour were put aboard said steamboat; that after she had taken said corn and flour great quantities of water ran into her hold through said open top seams, a great part of which might have been easily expelled had she been supplied with ordinary syphon pumps;

13 that said steamboat encountered no rough weather nor did she run upon or against anything, but, being in a helpless condition, she was landed at Big Eddy, about 80 miles below St. Louis, her head being made fast to the landing; she swung in gently alongside the bank of the Missouri shore, where she had about two feet of water in her hold, at which place she settled down upon the bottom of the river, close to the bank of the river on the Missouri shore; that, had she been supplied with a good working capstan, she might have been sparred off and then she might have been run upon a bar in said river, where all or the greater portion of her cargo might have been rescued; that the steam tow-boat Lioness was hailed, and said Lioness with 3 empty barges in tow came to the aid of said steamboat Henry C. Yeager, and the whole of the cargo of said steamboat Yeager could then have been put upon said barges and could have been saved, had the master seen fit to employ said tow-boat Lioness and barges for that purpose; that the master of said steamboat H. C. Yeager purposely concealed the fact that said steamboat had 2 feet of water in her hold, and requested the master

14 of said Lioness to pull the said steamboat's head off the bank, which was done, and the officers and crew of said Lioness were ready and willing and offered to render further help to said steamboat Henry C. Yeager, but the master thereof refused to receive further help from said tow-boat Lioness, and she was allowed to depart on her voyage; and after she had departed the master of said steamboat H'y C. Yeager attempted to navigate her to said bar in said river, but she was then so full of water that when her head touched said bar she fell off by the stern and sunk in about 30 feet of water, where she became a total loss, and nearly all of the goods and merchandise aforesaid were almost entirely destroyed.

10th. That said loss and damage were caused by the gross carelessness of all the respondents who place said goods and merchandize upon a steamboat wholly unfit and insufficient for the voyage, and by allowing said steamboat to proceed on said voyage in said unfit and insufficient condition, and by putting said steamboat and cargo in the care and control of a master wholly unfit and incompetent to perform the duties of master.

15 11th. That the libellants were the insurers of the goods aforesaid for the sums stated in a certain other exhibit hereto annexed and made part of this 11th article, marked Exhibit B; that the libellants have paid all the moneys by them insured as aforesaid to the owners of said goods and merchandize, amounting in all to the sum of thirty-one thousand seven hundred and twenty dollars 41 cents, and that the libellants have been subrogated to all the rights, claims, and demands which the said owners of said goods and merchandize respectively had against the respondents aforesaid for the loss and damages aforesaid.

12th. That all and singular the matters aforesaid are true and are within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray a decree in favor of the libellants severally against the respondents aforesaid jointly for the several sums of money by the libellants severally paid to the owners of said goods and merchandize as aforesaid as the same are set forth and stated in said Exhibit B, and that the said

16 William J. Kountz, John W. King, the C. V. Kountz Transportation Company, the K. P. Kountz Transportation Company, the H. C. Yeager Transportation Company, the Kountz Line, and the M. Moore Transportation Company be cited to appear and true answer make to all and singular the matters aforesaid, and if they be not found within the district aforesaid, then the libellants pray that the goods and chattels of the said respondents found within the district aforesaid be attached according to the course of this honorable court in admiralty and maritime proceedings to the amount sued for, to wit, the sum of thirty-one thousand seven hundred and twenty dollars and forty-one cents, as set forth in said Exhibit B hereto annexed, and that the same be condemned and sold by decree of this honorable court to satisfy the damages aforesaid, and that the respondents be condemned to pay costs; and that the libellants have such other and further relief in

the premises as to this honorable court may seem just and proper; and the libellants will ever pray.

CITIZENS' INS. CO. OF MO.,
17 By H. D. McLEAN, *V. P't.*
NORTHWESTERN NATIONAL INS'CE CO.,
Per JAMES A. WATERWORTH, *Agent.*
ORIENT MUTUAL IN. COMPANY,
By W. H. MARKHAM, *Gen'l Agent.*
WASHINGTON FIRE & MARI- IN. COMPANY,
By W. H. MARKHAM, *Agent.*
SUN MUTUAL INS. CO.,
JAMES I. DAY, *Pres't.*
CRESCENT INSURANCE CO.,
W. R. LYMAN, *Pres't.*
RHENISH WESTPHALIAN LLOYD,
J. H. MORRITZ, *Agent.*
HIBERNIA INSURANCE COMPANY,
JOHN HENDERSON, *President.*

DISTRICT OF LOUISIANA, *ss:*

James I. Day, being first duly sworn according to law, upon oath states that affiant is the president of the above-named Sun Mutual Insurance Company, one of the libellants above named; that affiant has read the foregoing libel, knows the contents thereof, and that the matters and things in said libel stated and set forth are true to the best of affiant's information, knowledge, and belief.

(Signed) JAMES I. DAY.

Subscribed and sworn [to] before me, at my office, in the city of New Orleans, in the district aforesaid, this 21st day of February, A. D. 1881.

[SEAL.] (Signed) W. J. CASTELL, *Not. Pub.*

18 O. B. SANSUM,
Proctor for Libellants.
J. A. CAMPBELL,
Associate Counsel.

Order.

Let this libel be filed, and, upon the libellants giving the stipulations required by law, let the warrant of arrest issue according to rule II of the admiralty rules prescribed by the Supreme Court of the United States.

Feb'y 24th, 1881.

(Signed) EDWARD C. BILLINGS, *Judge.*

Exhibit "A," Annexed to Libel.

Name of consignors.	Description of goods & mdze.	Consignees.	Value.	
E. Anderson & Co. Brewing Asso.	5 bbls. bottled beer	John Couts, Vidalia, La.	1,930	
	50 bbls. bottled beer	Vizard & Co., N. O.		
	100 bbls. bottled beer	Vizard & Co., N. O.		
Kehler Bros	100 bbls. flour, 100 half bbls. flour	Forcheimer Bros., New Orleans.	825	
Millsaps, Magee & Co	5 bbls. flour, 1 tierce hams, 1 tierce lard	W. T. M., Port Gibson, Miss.	98 90	
	10 sacks corn, 6 sacks oats	Loeb & Co., Port Gibson, Miss.	28 89	
				2,882 79
	Deduct goods saved & forwarded			532 83
				$2,349 96
	Add expense saving			166 21
19	Paid by the Citizens' In. Co			$2,516 17
	M. & St. Louis railroad, 1,000 bbls. flour, Harrison Betts, Son & Co., New Orleans, La.		6,000	
	Deduct goods saved and forwarded		589 58	
				5,410 42
	Add expense saving			328 64
	Paid by the Northwest Nat. Ins. Co.			5,739 06
Scharff Bros	50 sacks corn, 20 sacks oats, 25 bbls. meal, 20 half bbls. flour.	D. Lernle, Vidalia, La	239 71	
	15 sacks oats, 15 sacks bran, 15 bbls. flour	R. R'd, N. O.	147 23	
	2 cases salmon, 2 cases lobsters, 1 case oysters, 1 keg soda, 1 cask beer.	Glover & Whitcomb, Natchez, Miss.	44 56	
	15 bbls. meal	S. L. Benjamin, Natchez, Miss.	32 18	
	100 sacks corn, 100 bbls. meal	Ullman Loeb, Natchez, Miss.	331 95	
	10 sack- white corn, 15 sack- oats, 5 sack- bran	M. Rodney, Port Adams, Miss.	46 63	

20	M. Haas & Co	5 bbls. flour, 1 keg soda, 10 sacks oats, 3 sacks bran, 1 bbls. flour, 4 bbls. flour, 1 keg soda.	N. T. R. R., Bayou Sara, La.		62 05		
		10 bbls. meal	Blum & Asher, Kemp's l'd'ge		22		
		4 bbls. meal, 1 bbls. flour, 1 coil rope, 1 tierce bacon, 5 boxes crackers.	Henry Jones, Water Proof, La.	248 67	59 66		
		10 bbls. meal	David Wise, Waterproof		22		
		10 bbls. pork, 15 sacks corn, 1 box C. oil, 1 case salmon.	J. Soloman, St. Joseph, La.		145 01		
	Wickham & Pendleton	40 bbls. pork, 50 sacks corn, 20 sacks oats	W. & R. R., Bayou Sara, La		1,152 38		
		40 sacks corn, 40 sacks oats, 2 half bbls. grits, 2 doz. brooms, 10 bbls. pork, 20 bbls. meal.	Galveston, Waterproof, La		612 92		
	Wickham & Pendleton	10 bbls flour, 15 bbls. flour, 50 sacks corn, 50 sacks oats.			331 21		
21	Wickam & Pendleton	10 bbls. pork, 10 bbls. meal, 1 cask beer	J. W. Brougham, ag't, Rodney, Miss.		2,096 51	8,255 23	
		10 sacks oats, 4 sacks corn	J. R. Mathew, Fort Adams		351 61	8,255 23	
		10 bbls pork, 15 bbls. meal, 2 bbls. flour, 1 tierce hams, 20 sacks corn, 2 sacks bran.	J. Hahn, Natchez		154 27		
		84 sacks oats, 7 sacks corn, 1 — hams	T. M. McGill, Bindenant		24 82		
		10 bbls. pork, 6 pails lard	W. H. Rosenthal, River l'd'ge		216 83		
		20 sacks corn, 20 sacks bran, 2 bbls. salt	Lehman & Rotschild, Blackhawk L'dge.		254		
			C. R. Richardson, ag't, Hard Times, La.		130 51		
		Amount forward			62 90		
					3,295 45	8,253 23	
		25 bbls. meal, 10 bbls. pork, 1 crate hams, 2 M. paper bags, 1 coil rope, 450 paper sacks.	Lehman Bros., Fort Adams, Miss.		236 14		
		10 sacks corn, 10 bbls. meal, 1 case lemon sugar, 1 cad tea.	M. Samuel Bros., Fort Adams, Miss.		48 91		
22	Wickham & Pendleton.	10 bbls. pork, 15 bbls. meal	W. H. Gibson, ag't, Waterproof.		154 55		
		25 bbls. pork	John Murdock, Hard Times, La.		208 38		
		Add expenses paid on goods forwarded			4,033 43		
		Am't paid by Orient Mut. Ins'ce Co.			12 20		
					4,045 63	4,045 63	

EXHIBIT "A"—Continued.

Names of consignors.	Description of goods & mdze.	Consignees.	Value.	
J. Meyor & Co.	25 bbls flour	Jules Jollesant, Bayou Paul	160 87	
	10 bbls. flour, 10 half bbls. flour	B. Pendleton, Natchez	97 90	
	15 bbls. flour	P. Walsh	94 05	
			352 82	
	15 bbls. flour	Glover & Mulioned, Natchez Miss.	64 25	
	Am't forward		417 17	12,300 86
	50 sacks corns	J. H. Knox, Vicksburg	120 20	
	50 bbls. mess pork, ½ cask hams	C. Schwartz, Palmetto Plant I'd'ge.	647 24	
	50 bbls. mess pork, half cask hams	Schwartz, Moorville	645 92	
	20 sacks corn, 20 sacks oats, 20 sacks bran, 2 bbls. mess pork.	A. Levort, St. Mary plan., West Baton Rouge, La.	154 82	
	1 bbls. flour, 20 sack- corn	A. Levert	} 148 86	
	20 sack- oats, 20 sack- bran, 2 bbls. mess pork	M. Delphine, Plan. I'd'g, West B. Rouge, La		
23 T. Meyor & Co.	10 bbls. flour, 5 bbls. flour	T. Vignet, Plaquemine	88 29	
	30 bbls. flour, 20 bbls. flour, 2 casks beer, 1 cask D. shoulders, 30 sacks oats, 5 reams paper, 5 boxes candles, 5 bbls. whiskey.	J. Weber & Co., Vachiree I'd'g	793 06	
	Am't forward		3,015 54	12,300 86
	10 sacks corn, 2 sacks oats, 4 bbls. flour, 4 half bbls. flour, 50 empty flour sacks, 2 bbls. crystal, 1 bbls. grits, 1 cask beer, 2 half bbls. flour.	Jules Dehen, Island Shore P. O., La.	88 85	
	12 bbls. grits, 15 bbls. flour, 6 half bbls. flour, 5 sacks oats, 10 sack- corn, 1 tierce lard, 1 bbl. coal oil, 1 cask dry shoulder, 8 reams paper, 2 bbls. meal, 1 cask beer.	A. Melancon, Long View, La.	308 33	

24	T. Meyer & Co.	1 bbl. flour, 1 bbl. bacon & shoulders, 6 half bbls. flour, 1 bbl. meal.	E. Belzens, Point Coupee, La.	54 70	
				3,458 02	12,300 86
		1 cask shoulders, 1 bbl. meal, 8 half bbls. flour, 1 half bbls. flour, 48 sacks flour, 3 boxes candles, 6 boxes soap, 2 cases matches.	V. L. Poche, Redshopslere l'd'g.	155 29	
		50 sacks corn, 25 sacks bran, 2 boxes dry salted shoulders.	L. Thibodeaux, St. James	163 90	
				3,777 61	
		Add expenses paid in goods saved		16 50	
				3,794 11	
	Fuss & Backer	5 half bbls. flour	Marx Funkel, West Baton Rouge.	14 58	
		25 bbls. flour, 50 sacks corn, 2 boxes D. shoulders, 2 tierces lard.	Durnez Bellou, St. John Baptiste.	336 47	
		Am'ts forward		4,145 16	12,300 86
		10 bbls. flour, 10 bbls. meal, 5 bbls. grits, 2 boxes D. shoulders, 1 tierce lard.		148 93	
				4,330 09	4,330 09
		Am't paid by Washington Fire & Marine Ins. Co., of Boston.			$16,630 95
25	Pierson & Willery & Co.	540 bales hay, 615 bales hay, 960 sacks corn, 504 sack- corn, 911 sacks corn, 325 sack- corn.	Glover & Odenthal, New Orle., La.	$7,450 60	
		Deduct value of goods saved & delivered		2,397 53	
				5,053 07	
	Jno. W. King	300 sacks bran, 235 sacks bran, 300 sacks bran, 543 bbls. meal, 224 bales hay.	Wallace & Fairchilds, N. Orl's, La.	3,058 38	
		Deduct value of goods saved & delivered		361 25	
		Am'ts forward		2,697 13	16,630 95

EXHIBIT "A"—Continued.

Names of consignors.	Description of goods & mdze.	Consignees.		Value	
	Add am't paid Glover & Odenthal			5,053 07	
	Add expenses paid on good- delivered			867 87	
				8,618 07	
Wood & Lee	3 bbls. whiskey, 6 bbls. gin	Jack & Co., Helena, Ark.	467		
S. Whipple & Co.	4 boxes m'd'ze, 1 case matches, 4 boxes glassware, 60 reams paper, 3 boxes mucilage.	Jack & Co., Helena, Ark.	194	661	
	Am't paid by the Sun Mut. Ins'ce Co.			$9,279 07	9,279 07
The Collier White-Lead Company.	46 | 25 kegs white lead, 20 | 25 kegs white lead, 5 cases white lead.	S. M. Todd	344 00		
J. Uhrig Brewing Co.	10 casks beer		106 25	450 25	
26	Deduct value goods saved & delivered		106 25 129 75	236	
				214 25	
	Add costs & expenses saving good- delivered			66 41	
	Am't paid by Crescent Ins. Co.			280 66	280 66
	Am't forward				$26,190 68
Schubenberg	50 bbls. tallow	L. F. Boize, N. Orl's		1,100 38	
	Deduct net proceeds goods saved & delivered after deducting expense of saving.			400 38	
	Am't paid by Rhenish Westphalian Lloyd			700	700 00

Harlow, Spencer & Co.	930 sack- corn	Schwabacker & Hush, N. O.	1,069 50	
	Deducted goods saved & delivered		760 15	
			309 35	
	½ value insured by Hibernia Ins. Co.		154 68	
			154 69	
J. Wagner	131 bags bran	Wm. Schneider, N. O.	147	
S. J. Quinlam	602 bales hay	J. T. Gibbons & Co., N. O.	839 25	
Jno. W. King J. W. King	234 bbls. meal 2,456 sacks corn	J. H. Hanna, N. Orl's	4,267 23	
			5,408 15	
	Less proceed- goods saved & delivered		1,256 59	
			4,151 56	
	Add expenses paid saving goods		678 17	
	Am't paid by Hibernia Ins. Co.		4,829 73	4,829 73
	Total sum paid by all the libellants			$31,720 41

EXHIBIT B, Annexed to Libel.

	Citizens' Ins'ce Co., am't paid	$2,516 17
27	Northwestern National Ins'ce Co., amount paid	5,739 06
	Orient Mutual Ins'ce Co., am't paid	4,045 63
	Washington Fire & Marine Ins'ce Co., amount paid	4,330 09
	Sun Mutual Ins'ce Co., am't paid	9,279 07
	Crescent Ins'ce Co., am't paid	280 66
	Rhenish Westphalian Lloyd of Gladback, am't paid	700 00
	Hibernia Ins. Company, am't paid	4,829 73
	Total sum paid by all the libellants	$31,720 41

Writ of Attachment. Issued Feb'ry 28th, 1881.

District Court of the U. S., District of Louisiana.

CITIZENS' INSURANCE COMPANY *et al. vs.* KOUNTZ LINE *et al.*

UNITED STATES OF AMERICA:

The President of the United States to the marshal of the United States for the district of Louisiana or his lawful deputy, Greeting:

You are hereby commanded in the name of the United States and our said district court if you do not find Wm. J. Kountz, John W. King, The C. V. Kountz Transportation Company, The
28 H. C. Yeager Transportation Company, The K. P. Kountz Transportation Company, The Mollie Moore Transportation Company, and the Kountz line within your district that — attach their goods & chattels to the amount of thirty-one thousand seven hundred and twenty dollars and 41 cents, and of your doings in the premises you are to make due return according to law.

Witness the Honorable Edward C. Billings, judge of our said court, and the seal thereof, at New Orleans this 28th day of February, A. D. 1881.

[SEAL.] (Signed) R. DEVONSHIRE,
D'y Clerk.

Marshal's Return.

Received Feb'ry 28, 1881, and on the same day, month, and year I levied this writ on the st'b't J. B. M. Kehlor, her tackle, apparel, and machinery, said st'b't J. B. M. Kehlor being then in my possession and under my control, having on the same day been previously seized by virtue of an admiralty warrant issued in cause No. 11713, Overton & Conrad *vs.* St'b't J. B. M. Kehlor, of the docket of
29 this hon. court, from which last-mentioned seizure said st'b't J. B M. Kehlor was released on the 1st day of March, 1881, the claimants in said course having bonded; but the seizure under this writ, having been made by order of plaintiffs, was directed to be maintained, and on the 3rd day of March, 1881, I levied this writ by order of plaintiffs' attorneys on the st'b't Katie P. Kountz, her tackle, machinery, and furniture, both of said st'b'ts being then in

the port of New Orleans, and made inventories of the said st'b'ts and contents. On the 4th day of March, 1881, by direction of O. B. Sansum, Esq., plaintiffs' counsel, I also seized under this writ, as the property of the defendants, the st'b't E. O. Stanard, her tackle, machinery, &c., but said st'b't having been claimed by a third party as his property, was released from seizure on the same day by direction of pl'ffs' att'y, and the other steamboats heretofore named were held by the marshal under seizure until they were sold by virtue of a writ of *venditioni expenas*, issued on the 9th day of January, 1882, to which writ and return thereon reference is made.

30 Returned March 1st, 1882, by request of the clerk of the court.

(Signed) JACK WHARTON,
U. S. Marshal, Eastern District of Louisana.
By E. S. WURZBURGER, *D'y M'l.*

Citation to William J. Kountz.

The President of the United States of America to the marshal of the district of Louisana, Greeting:

You are hereby commanded to summon William J. Kountz to comply with the demand of the Citizens' Ins'ce Company & *als.*, contained in the libel, of which a copy accompanies this citation, or to deliver his answer to the same in the office of the clerk of the district court of the United States of America for the district of Louisiana, holding sessions in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held; and that you make due return hereof on

31 the 3rd Monday of March, 1881.

Witness the Honorable Edward C. Billings, judge of the said court, at the city of New Orleans, this 28th day of Feb'ry, A. D. one thousand eight hundred and eighty-one.

[SEAL.] (Signed) R. DEVONSHIRE,
D'y Clerk.

Marshal's Return.

Received this 28th day of February, 1881, and on the 1st day of May, 1881, served copies of the within citation and copy of libel annexed on the within-named William J. Kountz in the manner following, to wit, by handing the same to him in person in the city of New Orleans.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Citation to John W. King.

The President of the United States of America to the marshal of the district of Louisiana, Greeting:

You are hereby commanded to summon John W. King to comply with the demand of the Citizens' Insurance Company & *al.* contained

in the libel, of which a copy accompanies this citation, or to
32 deliver his answer to the same in the office of the clerk of the district court of the United States of America for the district of Louisiana, holding sessions in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held, and that you make due return hereof on the 3rd Monday of March, 1881.

Witness the Honorable Edward C. Billings, judge of the said court, at the city of New Orleans, this 28th day of Feb'ry, A. D. one thousand eight hundred and eighty-one.

[SEAL.] (Signed) R. DEVONSHIRE,
D'y Clerk.

Marshal's Return.

Received the 28 day of February, 1881, and on the 10 day of March, 1881, served copies of the within citation and copy of libel annexed on the within-named John W. King in the manner following, to wit, by handing the same to him in person in the city of New Orleans.

(Signed) C. R. STEELE,
D'y U. S. Marshal.

33 *Citation to K. P. Kountz Transportation Company.*

The President of the United States of America to the marshal of the district of Louisiana, Greeting:

You are hereby commanded to summon the K. P. Kountz Transportation Co. to comply with the demand of the Citizens' Insurance Company & *al.*, contained in the libel, of which a copy accompanies this citation, or to deliver their answer to the same in the office of the clerk of the district court of the United States of America for the district of Louisiana, holding sessions in the city of New Orleans, in ten day- after service hereof, or judgment will be rendered against them by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held, and that you make due return hereof on the 3rd Monday of March, 1881.

Witness the Honorable Edward C. Billings, judge of the said court, at the city of New Orleans, this 28 day of Febr'y, A. D. one thousand eight hundred and eighty-one.

34 [SEAL.] (Signed) R. DEVONSHIRE,
D'y Clerk.

Marshal's Return.

Received this 28 day of Febr'y, 1881, and, after diligent search and enquiry, I am unable to find the within-named defendant in the district of Louisiana, and I herewith return them not found.

Febr'y 28, '81.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Citation to C. V. Kountz Transportation Co.

The President of the United States of America to the marshal of the district of Louisiana, Greeting:

You are hereby commanded to summon the C. V. Kountz Transportation Co. to comply with the demand of the Citizens' Ins'ce Co. & *al.* contained in the libel, of which a copy accompanies this citation, or to deliver their answer to the same in the office of the clerk of the district court of the United States of America for the district of Louisiana, holding sessions in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against
35 them by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held, and that you make due return hereof on the 3 Monday of March, 1881.

Witness the Honorable Edward C. Billings, judge of the said court, at the city of New Orleans, this 28th day of Feb'ry, A. D. one thousand eight hundred and eighty-one.

[SEAL.] (Signed) R. DEVONSHIRE,
D'y Clerk.

Marshal's Return.

Received this 28 day of Feb'ry, 1881, and after diligent search and enquiry I am unable to find the within-named defendant in the district of Louisiana, and I herewith return them not found.

New Orl's, Feb'ry 28.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Citation to the Kountz Line.

The President of the United States of America to the marshal of the district of Louisiana, Greeting:

You are hereby commanded to summon the Kountz line
36 to comply with the demand of the Citizens' Insurance Co. & *al.* contained in the libel, of which a copy accompanies this citation, or to deliver their answer to the same in the office of the clerk of the district court of the United States of America for the district of Louisiana, holding sessions in the city of New Orleans, in ten days after the service hereof or judgment will be rendered against — by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held, and that you make due return hereof on the 3[d] Monday of March, 1881.

Witness the Honorable Edward C. Billings, judge of the said court, at the city of New Orleans, this 28 day of Feb'y, A. D. one thousand eight hundred and eighty-one.

[SEAL.] (Signed) R. DEVONSHIRE,
D'y Clerk.

Marshal's Return.

Received this 28 day of February, 1881, and after diligent search and enquiry I am unable to find the within-named defendant in the district of Louisiana, and I herewith return them not found.

Feb'y 28, '81.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

37 *Citation to the H. C. Yeager Transportation Co.*

The President of the United States of America to the marshal of the district of Louisiana, Greeting:

You are hereby commanded to summon the H. C. Yeager Transportation Co. to comply with the demand of the Citizens' Insurance Co. & *al.* contained in the libel, of which a copy accompanies this citation, or to deliver their answer to the same in the office of the clerk of the district court of the United States of America for the district of Louisiana, holding sessions in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against them by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held, and that you make due return hereof on the 3rd Monday of March, 1881.

Witness the Honorable Edward C. Billings, judge of the said court, at the city of New Orleans, this 28th day of Feb'y, A. D. one thousand eight hundred and eighty-one.

[SEAL.] (Signed) R. DEVONSHIRE,
D'y Clerk.

38 *Marshal's Return.*

Received this 28th day of February, 1881, and after diligent search and enquiry I am unable to find the within-named defendant in the district of Louisiana, and I herewith return them not found.

N. O., Feb'y 28, '81.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Citation to the Mollie Moore Transportation Co.

The President of the United States of America to the marshal of the district of Louisiana, Greeting:

You are hereby commanded to summon the Mollie Moore Transportation Co. to comply with the demand of the Citizens' Ins'ce Co. & *al.* contained in the libel, of which a copy accompanies this citation, or to deliver their answer to the same in the office of the clerk of the district court of the United States of America for the district of Louisiana, holding sessions in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against

them by default, which delay is increased one day for every
39 ten miles the defendant's residence is distant from New Orleans, the place where the court is held, and that you make due return hereof on the 3rd Monday of March, 1881.

Witness the Honorable Edward C. Billings, judge of the said said court, at the city of New Orleans, this 28 day of Feb'y, A. D. one thousand eight hundred and eighty-one.

[SEAL.] (Signed) R. DEVONSHIRE,
D'y Clerk.

Marshal's Return.

Received this 28th day of Feb'ry, 1881, and after diligent search and enquiry I am unable to find the within-named defendants in the district of Louisiana, and I herewith return them not found.

Feb'y 28, '81.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Motion to Set Aside and Quash the Attachment.

CITIZENS' INS'CE CO. & *al.*
vs.
KOUNTZ LINE & *als.*
} No. 1712.

Motion to set aside and quash the attachment. Filed March 21, 1881.

40 On motion of Singleton & Brown, proctors for the defendants herein—

It is ordered that the libellants show cause, on Friday, the 25th March, 1881, at 11 a. m., why the seizure of the steamboats J. B. M. Kehlor and the Katie P. Kountz, under process of attachment herein, be not set aside and quashed, and said steamboats be released on the grounds—

1st. That the legal representative of all the defendants herein and William J. Kountz in person was in New Orleans prior to the attachment herein, and personal service could have been made by the marshal prior to the seizure.

2nd. That under the second rule in admiralty, and according to law, no attachment could be made if the person could be found within the district.

3rd. That W. J. Kountz, in person and as president of the respective transportation companies sued herein, was personally presented to the marshal prior to the seizure of the st'b't Carrie V. Kountz, but notwithstanding the marshal persisted in seizing her.

41 4th. That the order directing said citation and alternative writ, under which the seizure was made by the judge of the U. S. district court for the eastern district of Louisiana, was entered and signed in the city of Washington, D. C., outside the district and the circuit to which the eastern district of Louisiana belongs.

5th. That the tort alleged to have been committee was, according to libellant's own allegations, committee by those in charge of and the owners of the st'b't Henry C. Yeager, the H. C. Yeager Transportation Company being the sole owners thereof, while the property attached herein is the st'b't J. B. M. Kehlor, of the M. Moore Transportation Company, and the st'b't Katie P. Kountz, of the Katie P. Kountz Transportation Company, each of said defendants being an entirely separate and distinct organization and corporations under the laws of the State of Missouri from the H. C. Yeager Transportation Company.

Order Granting Time to Answer. Entered March 22, 1881.

CITIZENS' INS. CO. & *al*
vs.
KOUNTZ LINE & *al.* } 11712.

42 On motion of Singleton & Brown, proctors for the various def'ts herein, and upon suggesting that they have been unable to obtain the various documents and titles necessary to enable them to file an answer, it is ordered that 10 days' further time be granted to file an answer.

Hearing and Submission of Rule to Quash.

M'CH 25, '81.

The rule to set aside the attachment taken by the def'ts on the 21st inst. came on for trial, Singleton & Brown for all defendants, J. A. Campbell for libellants; and after hearing the pleadings and argument, the court took time to consider.

Order Dismissing Rule to Quash.

CITIZENS' INS. CO. & *al.*
vs.
KOUNTZ LINE. } No. 11712.

MARCH 28, 1881.

This cause came on to be heard on the rule to set aside and quash the writ of attachment herein, and was argued by counsel. On consideration thereof, it is ordered by the court that said rule be dismissed and the attachment maintained, with costs.

43 *Separate Answer of W. J. Kountz, John W. King, and the Kountz Line. Filed April 6th,* 1881.

Separate answer of W. J. Kountz, John W. King, the Kountz Line, a body duly incorporated under and by virtue of the laws of the State of Missouri, and having its domicil in the city of St. Louis, State of Missouri, and of the Henry C. Yeager Transportation Company, a body corporate under and by virtue of the laws of the State of Missouri and having its domicil in said State, to the libel *in personam* herein filed by the Citizens' Insurance Company of Missouri, the

Northwestern National Insurance Company of Wisconsin, the Orient Insurance Company of New York, the Washington Fire and Marine Insurance Company of Boston, Massachusetts, the Sun Mutual Insurance Company of New Orleans, the Crescent Insurance Company, the Hibernia Insurance Company, and the Rhemish Wesphalian Lloyd of Gladbach, against W. J. Kountz, John W. King, the Kountz Line, the Yeager Transportation Company, the C. V. Kountz Transportation Company, the K. P. Kountz Transportation Com-
44 pany, and the M. Moore Transportation Company, in a matter of tort, civil and maritime; and herein the respondents, for themselves only, answer and aver articulately as follows:

1st. To the 1st article of said libel they answer that the matters and things therein set forth are in great part untruly and falsely alleged and pleaded, and the truth is that W. J. Kountz and Jno. W. King (two of respondents), with C. H. Seaman, William W. Otis, and Charles Scudder, did unite and form a corporation under the statutes of Missouri, and in the city of St. Louis, on the 24th day of June, 1872, with a declared capital stock of $15,000, divided into 150 shares of $100 each, which agreement or act of incorporation was duly registered in the office of the secretary of state of the State of Missouri on the 1st day of July, 1872.

That said corporation was therein designated as the Kountz line, and the objects were declared to be to build or purchase, use, and occupy one or more wharf-boats for the use and conveniences of the steamboats belonging to the stockholders of the company and such other persons and companies as the Kountz line might permit to participate in the privileges and advantages of such wharf-
45 boats, to be located at the port of St. Louis, in the State of Missouri, and for the landing, storage, and transfer of steamboats, freights, cargoes, goods, and merchandize, and for the purpose of affording to steamboats and other vessels all facilities for access to the wharf and landing at the said port of St. Louis, and to build or purchase, charter or hire, or employ steamboats, tow-boats, wharf-boats, tugs, barges, or other vessels for transportation of freight and passengers, towing, propelling, and lightering on the Mississipi river and its tributaries, and to do a general river business, as will more fully appear by the act of incorporation and the certificate of filing and registration by the secretary of the state of Missouri to be hereafter filed.

That the said Kountz line was thus duly and legally incorporated; that the entire amount of the capitol, to wit, $15,000, has been paid, the same being the value of the wharf-boat which was delivered to said corporation by the corporators thereof, and which now belongs to said corporation.

And respondents further say that the Kountz line has not employed, owned, hired, or navigated, or directed the running, employment, hiring, running, or owning any steamboat or steam-
46 boats, either by its officers, directors, agents, or in any other manner, since its existence, all the said Kountz line, under the terms of its charter, might have so done.

That it is true that a number of steamboats were and have been

at various times navigating the Mississippi river, being advertised by the Kountz line, as their agents, but that none of said boats were ever hired, chartered, owned, employed, or navigated by the Kountz line, nor did the said Kountz line ever receive any benefit or emolument therefrom or share in the profits or earnings of them or either of them; that the Kountz line only received from them fees for wharfage, storage, agency, &c., which the wharf-boat of said Kountz line corporation furnished.

2nd. To the 2nd article of said libel: That the matters and things therein alleged are untruly alleged and pleaded, and the truth is that while W. J. Kountz and John W. King are now respectively the president and secretary and treasurer of Kountz line, and are directors thereof, they have not been the only officers and agents of said Kountz line, but that at various dates and for different periods others have been president, secretary, &c., viz: J. C. Van Hook was president from 6th July, 1874, to May 20, 1876; W. H. Kenney was secretary and agent from the 19 August, 1874, to the 1st June, 1875.

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3rd. To the third article of said libel: That the matters and things therein alleged are untruly alleged and pleaded, and the truth is that while respondent, W. J. Kountz, owned a large interest in each of the said steamboats, viz., C. V. Kountz, K. P. Kountz, Henry C. Yeager, and Mollie Moore, named in said article, others were largely interested in them as owners. John W. King and E. A. Sheble were not in any manner ever the real or substantial owners of either of said boats, nor did King or said Sheble own any interest whatever in all or any of said boats.

That said boats were owned as follows:

W. J. Kountz $\frac{8}{12}$th-, Sam'l Van Hook $\frac{3}{12}$th-, and H. W. Hazlett $\frac{1}{12}$th of the st'b't Henry C. Yeager.

W. J. Kountz $\frac{13}{16}$th- and W. Braithwaite $\frac{3}{16}$th- of the Katie P. Kountz.

W. J. Kountz $\frac{13}{16}$th- and Ch's H. Seaman $\frac{1}{16}$th- of the st'boat Carrie V. Kountz.

W. J. Kountz $\frac{13}{16}$th-, and Wm. P. Anderson $\frac{2}{16}$th-, and —— Graham $\frac{1}{16}$th- of the st'b't Mollie Moore.

It is true that said boats were advertised by the Kountz line, the said line being the agents of each of them, but said boats were not held out as the property of the Kountz line, nor were they claimed as such; and all bills of lading were made out and signed by the respective boats to which freight was sent by the shippers, and no bills of lading was issued in the name of the Kountz line nor signed by it, except as agent; that it is not true that the owners of said steamboats surrendered the custody, management, and control of all or any of said steamboats to W. J. Kountz or to the Kountz line to conduct and carry on the business of common carriers from the city of St. Louis, but that each boat collected its own freights and retained them, and the Kountz line only received from said boats a valuable consideration varying from $100 to $150 for each trip for services rendered.

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4th. To the 4th article of said libel respondents admit the incor-

poration of the K. P. Kountz Transportation Company, the C. V. Kountz Transportation Company, the Henry C. Yeager Transportation Company, and the M. Moore Transportation Company on the 30th Nov'ber, 1872, by Kountz, King, and Sheble, but they deny that said Kountz, King, and Sheble had previously to said date, or at that date, the joint possession and control of the
49 said steamboats Katie P. Kountz, Carrie V. Kountz, Henry C. Yeager, and Mollie Moore, as the officers of the Kountz line, or in any other capacity.

And they aver that the respective owners of said boats subsequently sold and conveyed them to the respective transportation companies—the Katie P. Kountz to the Katie P. Kountz Transportation Company, the Carrie V. Kountz to the C. V. Kountz Transportation Company, the Henry C. Yeager to the Henry C. Yeager Transportation Company, and the Mollie Moore to the M. Moore Transportation Company—with the exception of $\frac{1}{16}$th of said Mollie Moore, and the respective owners sold and conveyed their interests as aforesaid and accepted in payment therefor the stock of said respective transportation companies, and said boats were fully equal in value to the capitol of the respective companies to which they were sold, and the capitol stock of each of said companies was so invested.

5th. To the 5th article of said libel: That the matters and things in said article are in great part falsely and untruly alleged and pleaded; but the facts and truth is that the said Kountz, King, and Sheble were not in fact the owners of all the stock in said
50 various transportation companies, nor is it true, as alleged, that they claimed so to be, but that said Kountz, King, and Sheble were only incorporators, in accordance with the laws of Missouri, which required the names of the directors to be inserted in the act of incorporation.

And they further say that said Kountz and King are not now, nor have they ever been, the sole directors of the said various transportation companies.

6th. To the 6th article of said libel: That the matters and things contained in said article are in great part untrue, and the truth is, and they so aver, that W. J. Kountz and Sam'l Van Hook, being the owners of $\frac{11}{12}$ths of the st'b't Henry C. Yeager, sold and conveyed the same, on the 9th January, 1873, to the Henry C. Yeager Transportation Company for $17,875, and accepted the stock of said company in payment thereof, and H. K. Hazlett, owner of $\frac{1}{12}$th of said st'b't Henry C. Yeager, on the 25th Nov'ber, 1873, sold the same to said transportation Co. for $1,666.

That W. J. Kountz, being the owner of $\frac{13}{16}$ths of the st'b't Katie P. Kountz, on the 11th January, 1873, sold and conveyed the same to the K. P. Kountz Transportation Co. for $12,000, and accepted
51 stock of said company in payment therefor, and N. Braithwaite, being the owner of $\frac{3}{16}$ths of said steamboat, on 10th April, 1873, sold and conveyed the same to said K. P. Kountz Transportation Company for $3,000, and accepted stock of said company in full payment of the same.

That W. J. Kountz, being the owner of $\frac{13}{16}$ths of the st'b't Carrie V. Kountz, on the 11th January, 1873, sold and conveyed the same to the Carrie V. Kountz Transportation Company for $17,000, and accepted stock of said company in payment therefor, and C. H. Seaman, being the owner of $\frac{3}{16}$ths of said steamer, on the 27th January, 1873, sold and conveyed the same to the Carrie V. Kountz Transportation Company for the sum of $3,000, and accepted stock of said company in payment thereof.

That W. J. Kountz, being the owner of $\frac{13}{16}$ of the st'b't M. Moore, on the 11 Jan'y, 1873, sold and convey[ed] the same to the M. Moore Transportation Company for $17,000 and accepted stock of said company in payment therefor, and Wm. B. Anderson, being the owner $\frac{2}{16}$th of said st'boat, on the 27th Feb'ry, 1873, sold and conveyed the same to said transportation Co. for $2,000, and accepted stock
52 of said company therefor in payment thereof; that the remaining $\frac{1}{16}$th of said steamboat still belongs to —— Graham, of Pittsburgh, Penn., who has never, to respondents' knowledge, sold the same; and they further specially deny that the said directors, Kountz, King, and Sheble, under all said companies, under the name of the Kountz line, *or* appointed one general agent or carried on a joint business; and respondents deny that they then or have at any time since made all or any of their contracts of affreightment by or through the Kountz line, or advertised the said steamboats as the property of the Kountz line.

But they specially aver that any and all business transacted by any of the aforesaid steamboats was upon the responsibility of the boat itself, and not on account of any joint interest, nor did the said Kountz line or its officers and directors, as such, in any manner represent the respective interests of the aforesaid boats, except for special purposes as allowed in its charter.

7th. To the 7th article of said libel: That the matters and things therein alleged are in great part untrue, and that the truth is that the directors and stockholders of the C. V. Kountz Transpor-
53 tation Company had the st'b't Carrie V. Kountz, the property of said corporation, dismantled and bought the hull of the st'b't Paragon, and had the machinery and engines of the Carrie V. Kountz put or placed in said hull, and did rebuild and name said boat so rebuilt the st'b't E. O. Stanard, and which said steamboat until recently belonged to said transportation company.

And respondents further say that the directors and stockholders of the M. Moore Transportation Company had or caused the steamboat D. H. Rucker, and the st'boat Charles H. Tompkins, and the J. B. M. Kehlor to be built for said transportation company, and said company until recently owned and controlled all of said steamboats except one-half of the Tompkins lately sold, together with the Mollie Moore.

But respondents deny that these steamers have been employed and navigated under the control of W. J. Kountz & John W. King, or either of them, for or on behalf of all of said companies by the name of the Kountz line, or that said steamboats have been held out to the world as steamboats of said Kountz line. On the con-

trary, the st'b't E. O. Stanard has been solely managed and
54 run for account of the C. V. Kountz Transportation Company, and the said steamboats Rucker, Tompkins, and Kehlor were solely managed and run for account of the M. Moore Transportation Company.

8th. To the 8th article of said libel: The matters and things therein set forth are in great part untrue, and the truth is, and these respondents so aver, that on and before the 21 May, 1880, the st'b't Henry C. Yeager (the property of the Henry C. Yeager Transportation Company) was put on berth at the port of St. Louis, to load for New Orleans and intermediate points; that in her cabin was exhibited her inspection certificate, as required by law, showing her ownership, and special certificate of underwriters showing her seaworthiness; that according to the mode of doing business in the port of St. Louis the underwriters caused the name of said steamboat to be posted on the bulletin board in the Merchants' Exchange, promulgating thereby the fact that said steamboat was seaworthy, and that all shipments on her were insurable risks, and such announcement on said bulletin board was and is used to advise shippers of
freight in the port of St. Louis by what particular boat they
55 can safely ship; and the shippers of all merchandize and goods shipped on the st'b't H. C. Yeager on her trip from the port of St. Louis, sailing 21 May, 1880, were fully advised on what boat they were sending their goods and merchandize, and their bills of lading and dray tickets were made out by the shippers themselves, designating the st'b't Henry C. Yeager as the boat by which their goods and merchandize were to be shipped.

And respondents specially deny that said goods and merchandise, or any part thereof, were sent by the shippers thereof to the transportation company named above in the answer to article 4th by the name of the Kountz line, nor were the same received by said transportation company in the name of Kountz line, nor were said goods and merchandize by them to be carried in said name, but that all of said goods and merchandize were directed by the shippers thereof to be shipped on the st'b't Henry C. Yeager, and they were so shipped, and neither the Kountz line nor any transportation company, except the Henry C. Yeager Transportation Company, had any interest whatsoever in said shipments.

Respondents are not advised what goods and merchandize
56 and their value appear in Exhibit A and neither confess or deny the same, but will require strict proof thereof, but they aver that no goods and merchandize were ever shipped as is alleged in said article by any one.

9th. To the 9th article of said libel: That the matters and things therein set forth are in great part falsely and untruly alleged and pleaded, and the fact and truth is that W. J. Kountz, John W. King, and Thomas Rogers, as officers and directors of the Henry C. Yeager Transportation Company, placed the st'b't Henry C. Yeager on berth at the port of St. Louis on and before May 21, 1880, for a voyage to New Orleans and intermediate ports and places, and for a consideration arranged with the Kountz line for the use of its

wharf-boat for loading purposes, but that the said boat did not belong to the Kountz line, nor was she designated as a boat belonging to the Kountz line to make any voyage or carry any freight.

That the said steamboat was, at and prior to the date of her sailing, in good order, being tight, staunch, and strong, and in every way seaworthy; that she was well and fully equipped, properly manned with a good and sufficient crew, and with competent and skilled officers in command.

57 That said steamboat has had a short time previously a bow dock put under her, and caulked on her bow, and set up along her sides, and other repairs were made to her, and she was in good repair.

That said steamboat was laden with a fair cargo of produce, provisions, and merchandize and started, on the 21 May, 1880, down the river on her intended voyage; that when a short distance below Horse Tail bar one of her boilers was found to be leaking and she was landed and boilermakers sent for from St. Louis, and upon their arrival the boat proceeded down the river on her sound battory (she having two) to East Kinswick, where she took on 1,200 sacks of corn, and, the repairs to the boiler being completed, she proceeded down to Chester, where 300 barrels of flour were taken on board.

That she then proceeded on her voyage in good condition, intending to fill out her cargo at points below; that when near Big Eddy Point (about 100 miles below St. Louis) it became necessary to make a landing to repair something about the machinery, viz., one of the pins holding one of the stuffing boxes breaking, and a landing was made a little below the landing for that purpose.

58 That she had made no water up to that time and her syphon pumps were working well; that the lines were made fast, but the boat's stern swung out and back to the shore with considerable force two or three times, and she finally remained alongside the bank of the river; that there was nothing unusual in this and no trouble was anticipated or apprehended.

That when the repairs to the machinery were completed steam was gotten up & it was then found that she moved back but a little way from the force of her own engines and then listed somewhat to the starboard; that it was discovered that she could not get off without help; that soon after the Lioness (a tow-boat) came along and her assistance was asked and given; that the Lioness at first pulled straight ahead, but failed to move her; that she then pulled square out into the river and the Yeager came off; that the lines of the Lioness were then cast off and the Lioness proceeded on her voyage; in a few minutes afterwards it was discovered the Yeager was making water rapidly and the Lioness was hailed again, but she did not heed the signal of the Yeager.

That the syphon pumps were then kept constantly going, and orders were given to the pilot at the wheel to land her as

59 favorable as possible on the bar nearly opposite, but the ground was unfavorable, & notwithstanding every exertion of those in charge of her she soon filled and partically sunk, and despite all that could be done she soon after broke in two and proved

a total loss; that those in charge of her did everything in their power to obtain assistance as speedily as possible; that both the st'b't Colorado and St. Helena passed without rendering assistance, altho' they were requested so to do; that finally the st'b't Emma B. Elliott came and took off all the freight she could, and subsequently the st'b't Mollie Moore came and saved about 300 tons of freight. Soon after the st'b't Henry C. Yeager, with a large part of her cargo, sunk entirely & were totally lost.

That the master and crew of the Yeager did not know that the Yeager was making water, nor that she had 2 feet of water in her hold when the Lioness pulled her off. On the contrary, she was free from water when the landing was made at or near Big Eddy, and about the time she came off she had no water in her.

Respondents aver that she was well and properly handled and navigated, and that the water did not come in through her
60 seams more than ordinary with any steamboat, and that she must have struck some hidden obstruction, which, when she came off, left a *w*hole in her.

That it is not true that her seams were open. On the contrary, her bow had been recently caulked and her seams set up along the sides, and it is not true that she was deeply laden, nor did the water come through her seams in any appreciable quantity.

Respondents further aver that said steamboat was specially fitted and built with 14 water-tight compartments, into each of which a good syphon pump in good order was fitted, and that said steamboat was well supplied with proper pumps and with a good working capstan, and they further say that the master of said steamboat was a competent and careful person, well fitted and qualified for the position of master.

And respondents, Kountz and King, say that it is untrue, as alleged, that they knew said steamboat was utterly unseaworthy and unfit to receive goods and proceed on her voyage, and that it was not through any carelessness or neglegence of theirs that her unfitness was unknown to them, as is alleged, because it is not true,
61 as is alleged in said article, that she was unseaworthy and unfit. Respondents specially deny that great quantity of water, or any quantity more than usual with steamboats, came through her seams into her hold.

That they specially say, that said steamboat was at no time in a helpless condition until shortly after she was pulled off by the Lioness, and it is not true that she had 2 feet of water in her hold when she landed near Big Eddy; nor did she settle down on the bottom of the river close to the bank, nor is it true, as is alleged in said article, that the master of said steamboat purposely concealed the fact that the Yeager had two feet of water in her hold when she landed at Big Eddy, nor that the assistance of the Lioness was refused. On the contrary, they aver that immediately upon the discovery that the Yeager was making water rapidly, the Lioness was hailed again for assistance, but failed to reply to the Yeager's call for help or to return to her assistance.

Respondents aver that the hull of the st'b't H. C. Yeager, altho' a

large and valuable one, had no insurance on it, as the Henry C. Yeager Transportation Company was its own insurer, and every effort was made that could be made to save her and her cargo
62 from being lost.

That there was no negligence, no misconduct on the part of her officers and crew, and said vessel was carefully and skilfully managed and handled, and said accident and loss did not occur through the fault, negligence, misconduct, or unskilfulness of any of respondents or of the officers and crew of said steamboat.

10th. That in answer to the 10th article of said libel, they say that the matters and things therein alleged are untrue, and the truth is as fully set forth in respondents' answer to the 9th article, *supra*, and to which they refer as their answer thereto. The Kountz line specially deny that it or its officers had anything to do with lading any goods or cargo on the Yeager.

11th. Answer to 11th article of said libel: That as to the matters and things set forth in said article, respondents are not informed as to the truth or falsity of the same, and neither confess nor deny the same, but will require strict proof thereof on the trial of the cause.

12th. That all the matters and things are as herein set forth in the foregoing answers and are not true and correctly set forth in the libel of libellants.

63 Wherefore these respondents ask that this hon. court will be pleased to pronounce against the libel herein, and that the same may be dismissed with costs to these respondents, to be taxed, and for general relief.

(Signed) SINGLETON & BROWN, *Proctors.*

John W. King, being duly sworn, says that he is one of the respondents in the above-entitled cause, and that he is also the secretary of the Kountz line, and was also secretary for the Henry C. Yeager Transportation Co., both of St. Louis, Mo.; that he has read the foregoing answer, knows the contents thereof, and the matters and things in said answer stated and set forth are true to the best of his information, knowledge, and belief.

(Signed) JOHN W. KING.

Sworn to and subscribed before the undersigned, a duly commissioned and qualified notary public in and for the parish of Orleans, State of Louisiana, at New Orleans, this April 5th, 1881, as witness my hand and seal.

[SEAL.] (Signed) ANDREW HERO,
Not. Pub.

Separate Answer of The C. V. Kountz Transportation Company. Filed April 13, 1881.

64 CITIZENS' INS. CO. & *al.* *vs.* THE KOUNTZ LINE & *al.* } No. 11712.

To the hon. the district court of the U. S. for the eastern district of Louisiana:

The separate answer of the C. V. Kountz Transportation Company, a body corporate under and by virtue of the laws of the State of Missouri, and having its domicile in the city of St. Louis, of same State, to the libel *in personam* of the Citizens' Insurance Company & *al. vs.* The Kountz Line & *al.*, in a matter of tort, doth allege and articulately propound as follows:

1st. To the 1st article of said libel: That the matters and things therein set forth are in great part untruly and falsely alleged and pleaded; and respondent avers that the facts are as set forth in the answer to the 1st article of the libel of Kountz line & *al.*, and respondent adopts said answer and prays that it be taken and considered as respondent's answer herein.

2nd. To the 2nd article of said libel: That the matters and things therein alleged are in great part untrue; and respondent avers that the truth is as set forth in the answer of the Kountz line &

65 *al.* to said 2nd article, and respondant adopts the same as its answer, and prays that the same may be so taken and considered.

3rd. To the 3rd article of said libel: That the matters and things set forth in said article are in a great part untrue, and the facts are, as respondent is informed and believes and it so avers, as are set forth in the answer of the Kountz line & *al.* to said 3rd article, and filed herein, which respondent adopts the same and asks that it be taken and considered its own answer thereto.

And, answering further specially, respondent says that its business, although advertised by the Kountz line, was conducted and carried on [in] its own name; that all bills of lading were signed by the officers, duly authorized so to do, of its own boat, the Carrie V. Kountz, or its agents, and respondent was never held out to the public or any one else as the property of the Kountz line.

4th. To the 4th article of said bill respondent avers that the matters and things set forth are in great part untrue; that the facts are as are set forth in the answer to this article of the Kountz line & *al.*, herein filed, and which respondent adopts as its own answer thereto.

66 Respondent admits the incorporation of the C. V. Kountz Transportation Co. on the 30th day of Nov'ber, 1872, but it specially avers that the capitol stock was issued and accepted by the owners of the st'b't Carrie V. Kountz, and said stock is now held and owned by the original owners of said steamboat or by persons to whom the same has been transferred.

5th. To the 5th article of said libel respondent avers that the matters

therein are in great part untruly alleged and pleaded, and that [the] facts are as are set forth in the answer of the Kountz line & *al.* to this article, which respondent adopts as its own, and prays that it be so considered; and respondent specially avers that all the proceedings taken for its incorporation were strictly in conformity to the laws of Missouri, and the laws of that State requires the name of the corporators and its officers and directors to be mentioned.

Respondent admits that Kountz and King have been among the directors, but they have not been the sole directors, nor are they the chief stockholders.

6th. Answer to the 6th article of said libel: Respondent avers that the matters and things therein alleged are in great part untrue, and that the facts are, as respondent is informed and
67 believes and it so avers, as are set forth in the answer of the Kountz line & *al.* to this article, which respondent adopts as its own hereto.

Respondent, further answering, denies that Kountz, King, and Sheble were the real and substantial owners of the st'b't Carrie V. Kountz, or that Kountz, King, and Sheble ever at any time executed any bill of sale of said steamboat to this respondent, but avers that W. J. Kountz & C. H. Seaman were the sole and real owners of said steamboat on the 16th December, 1872.

7th. Answer to the 7th article of said libel: Respondent avers that the matters and things therein alleged and pleaded are in great part untrue, and respondent says that its steamboat, the said Carrie V. Kountz, has, ever since said steamboat became the property of respondent, been solely managed, controlled, and run in the interest of respondent; that its earnings are not and have not been in any manner shared or participated in by any person or persons, corporation or corporations, whatsoever; nor has respondent shared or participated in the management, control or earnings of any other steamboat or steamboats whatsoever.

68 And that as to all the other matters and things herein necessary to be answered the same are truly set forth, as respondent is informed and believes, in the answer of the Kountz Line & *al* to the 7th article of this libel, and which respondent hereby adopts as its own hereto.

8th. As to the 8th article of said libel: Respondent says that the matters and things therein alleged are in great part untrue, and the truth and facts are, as respondents is informed and believes, as are set forth in the answer of the Kountz Line & *al.* to this article, and it hereby adopts the same as its answer hereto.

Respondent answers specially that it had no connection with or interest in said matter, and was not present, nor did it have any personal cognizance or otherwise or part in the lading or running of the st'b't Henry C. Yeager, and even if it should be held that any blame or neglect attached to the Yeager or those in charge or her, this respondent cannot be held in any manner responsible therefor, as respondent neither shared in her profits nor losses, nor had anything to do with her management nor control.

9th. To the 9th article of said libel: Respondents says that the

matters and things herein alleged are untruly and falsely
69 alleged and pleaded, and the truth and fact is that only the officers and directors of the Carrie V. Kountz Transportation Company, when the Carrie V. Kountz should make her trips; that while the public designated such boats and others as the Kountz line, and while the words "Kountz line" were used generally in the heading of advertisement of boats running from the Kountz line wharf-boat in St. Louis, the Carrie V. Kountz was not the property of the Kountz line, land was not in fact a part of any line, and its business was transacted solely in its own name and for its own account, and respondent did not share or participate in the management, control, or direction, or the earnings of any other boat or boats, nor did any other boat, person, or corporation or corporations share or participate in the management, control, direction, or earnings of respondent's steamboat, the Carrie V. Kountz; that the title "Kountz line" was used only as a mere designation and for convenience and not because of any community of interest between the various steamboats and respondent's said steamboat, nor between the Kountz line and this respondent, for there was none and never has been.

70 And in all other respects this respondent, not being cognizant of the facts concerning the condition, lading, running, and management of the st'b't Henry C. Yeager, *this respondent* can only answer from information and belief, and, as respondent is informed and believes, that the facts are, and it so avers that the facts and truth is, as are set forth in the answer of the Kountz Line & *al.* to this article, and it therefore adopts the same as its own hereto.

10th. To the 10th article of said libel respondent denies that the statement- therein made are true and correct, and avers that the truth and facts are that neither this respondent nor its officers or agents had anything to do with the placing, putting, or shipping goods or freight on the st'b't Henry C. Yeager, and this respondent can in no manner be liable therefore. Respondent says, and it so believes and avers, that the facts are as alleged, pleaded, and set forth in the answer of the Kountz Line & *al.* to this article, and it hereby adopts the same as its answer hereto.

11th. Answer to the 11th article of said libel: That as to the matters and things alleged this respondent is not informed, and neither confesses nor denies the same, but will require strict proof thereof; but respondent denies the right of the libellants to sue for or recover for the value of said merchandize laden thereon.

71 12th. Answer to 12th article of said libel: Respondent says that the matters and things therein set forth are not true, but the truth and facts are as herein set forth in these several answers and in the answer of the Kountz line & *al.* filed in this cause, and as are herein adopted and made respondent's own.

13th. And respondent, further answering, says that this respondent is in no manner responsible for any loss occasioned by the sinking of the st'b't Henry C. Yeager, nor for the conduct or misconduct of the owners, agents, officers, or crew thereof.

Wherefore this respondent prays that this hon. court would be

pleased to pronounce against the libel herein, and that the same be dismissed at libellants' costs and for general relief.

(Signed) THOMAS ROGERS, JR.

Sworn to and subscribed before me this 13th April, 1881.

(Signed) R. DEVONSHIRE,
D'y Clerk.

Separate Answer of the M. Moore Transportation Co. Filed 13th April, 1881.

CITIZENS' INS'CE CO & *als.*
vs.
THE KOUNTZ LINE & *al.*
} No. 11712.

72 To the hon. the district court of the U. S. for the eastern district of Louisiana:

The separate answer of the M. Moore Transportation Company, a body corporate under and by virtue of the laws of Missouri and having its domicil in the city of St. Louis, in said State, sole owners of the steamboat J. B. M. Kehlor, attached herein, by virtue of a warrant of arrest *in personam* and now in custody of the marshal of this district and herein intervening for its interests, to the libel *in personam* of the Citizens' Insurance Company & *al. vs.* the Kountz line & *al.* in a matter of tort, doth allege and articulately propound as follows:

1st. That your respondent is the sole and only owner of the steamboat J. B. M. Kehlor, a vessel of about 950 tons, now in custody of the marshal by virtue of a warrant of arrest *in personam* in the above entitled and numbered cause, and that no other person or persons, corporation or corporations, have any interest in or control over said steamboat.

2nd. That the attachment or seizure of said steamboat J. B. M. Kehlor by the U. S. marshal of this district under the process issued herein was illegal and unwarranted by law, and this hon. court is without jurisdiction as to said steamboat, the property of respondent, for the reason that the libellants prayed in their libel for

73 the attachment of the property of respondent, only in the event said respondent could not be found.

That this respondent, by its president, W. J. Kountz, was and has been within the jurisdiction of this court prior to the seizure of its property, the said steamboat, and was willing and ready to accept service and to be served *in personam,* and the marshal aforesaid could have found him at any moment, as it was publicly announced in the daily papers prior to the seizure of said steamboat that he was in New Orleans; that in the capacity of president of said company he offered himself to the marshal for personal service, but said marshal declined to make service on him; that the order directing said seizure to be made was signed by the judge of this court when out of the district of Louisiana, to wit, while in Washington city, in the Dist. of Columbia; that the libellants persisted in forcing the said marshal

to seize respondent's property, altho- they well knew that this respondent was represented in this district by its president, the said W. J. Kountz, and was willing to be personally served, and that no judgment or decree can be pronounced against the property of this respondent so brought into court.

74 And this respondent, not waiving in any manner its right to contest the regularity and legality of the seizure of its property and the mode by which it was compelled to make an appearance to claim and defend its said property and rights, answers articulately to the several articles of said libel as follows:

3rd. 1st, to the 1st article of said lible: That the matters and things therein set forth are, as respondent is informed and believes, and it so avers, in great part untruly and falsely alleged and pleaded, and it avers that the facts are as set forth in the answer to the 1st article of said libel made in this cause by the Kountz line, W. J. Kountz, Jno. W. King, and the Henry C. Yeager Transportation Company, and respondent adopts said answer as its answer hereto and prays leave that said answer to said 1st article may be taken and considered as a part hereof.

4th. 2, to the 2nd article of said libel: That the matters and things thereon alleged are in great part untrue, and respondent avers that the truth is as is set forth in the answer of the Kountz line & *als.* to said 2nd article, and this respondent adopts the same and prays that the same may be taken and considered as its answer hereto.

5th. 3d, to the 3d article of said libel: That the matters
75 and things set forth in said article are in great part untrue, and the facts are as are alleged. This respondent is informed and believes, and so avers, as are set forth in the answer of the Kountz line & *al.* to said 3rd article and filed in this cause, and this respondent adopts the same as its answer, except as hereinafter specially set forth.

And respondent, further answering, says that respondent's business was advertised by the Kountz line, but that its bills of lading were signed by officers duly authorized of the st'b't Mollie Moore, and such other boats belonging to respondent which were running, or their agents, nor were the said steamers held out as the property of the Kountz line.

6th. To the 4th article of said libel respondent avers that the matters and things herein set forth are in great part untrue, but the facts are as set forth in the answer to this article of the Kountz line & *als.*, filed herein, & respondent adopts the same as their answer. Respondent admits the incorporation on the 30th day of Nov'ber, 1872, but it specially avers that the capital stock of said company was issued and accepted by the owners of the st'b't Mollie Moore for their interest therein, excepting one — Graham, who did not dispose of his interest, and the stock of said company is now held
76 and owned by the original owners of said steamboat or those to whom the same has been sold & transferred.

7th. To the 5th article of said libel respondent avers that the matters and things therein set forth are untruly alleged and pleaded, and the facts are as are set forth in the answers of the Kountz Line &

al. to this article, and respondent adopts the same as its own and prays that it be so considered.

And respondent avers that all the proceedings taken for its incorporation *was* strictly in conformity to the law of Missouri, and the law of that State requires the names of the corporators and its officers or directors to be mentioned. Respondent admits that Kountz and King have been directors, but they have not been the sole directors, nor are they the chief stockholders.

8th. To the 6th article of said libel respondent avers that the matters and things therein alleged are untrue, and this respondent is informed and believes that the facts are truly set forth in the answer of the Kountz line & *al.* to this article, and respondent adopts the same as its answer hereto, and prays that the same be taken and considered as such.

But respondent specially denies that Kountz, King, and
77 Sheble were the real and substantial owners of the Mollie Moore or that Kountz, King, and Sheble ever at any time executed any bill of sale of said steamboat to the M. Moore Transportation Company, and aver that W. J. Kountz, Will'm B. Anderson and —— Graham were the owners of the steamboat Mollie Moore on the 16th Dec'ber, 1872, and that Kountz and Anderson sold their interest in said boat to the M. Moore Transportation Co. on the 11 January, 1873, and 27th February, 1873, and *accepted* the stock of said company in payment therefor, and that Graham never sold his interest therein, but owns it to this date, as respondent is informed and believes and so avers.

9th. To the 7th article of said libel respondent avers that the matters and things therein set forth are in great part untruly alleged and pleaded; and respondent says that as to the matters alleged concerning the Carrie V. Kountz they are not informed, and neither confess nor deny the same, but will require strict proof thereof.

And respondent says that the steamboats D. H. Rucker, Charles H. Tompkins, and the J. B. M. Kehlor were built by the M. Moore Transportation Company, by and under the advise and control of its president & directors of said company, out of the earning-
78 of the M. Moore Transportation Co., and no other company or companies or person or persons had or have any interest therein, and the steamboat J. B. M. Kehlor is the sole property of the M. Moore Transportation Company, and said steamboats, nor any of them, has or have ever been run for the benefit of any one but this respondent, and that as to all the other matters and things herein necessary to be answered the same are truly answered in the answers of the Kountz Line & *al.* to the 7th article of said libel, and respondent begs leave to adopt the same and prays that it may be taken and considered as its answer.

10th. To the 8th article of said libel respondent avers and says that the matters and things herein alleged are in great part untrue, and the truth and facts are, as this respondent is informed and believes, as are set forth in the answer of the Kountz Line & *al.* to article 8th of said libel, and it prays leave to adopt the same as its

answer, and that it may be taken and considered as such. Respondent specially answers that it had no connection or business in said matter and was not present nor did it have any personal cognizance, or otherwise, or part in the lading or running the st'boat Henry C. Yeager, and even should it be held that any blame or neglect attached to the Yeager or those in charge or con-
79 trol of her, this respondent cannot be held in any manner responsible therefor, as respondent neither shared in her profits or her losses nor had any management or control of her.

11th. To the 9th article of said libel respondent says that the matters and things therein alleged are untrue, and that the truth and fact is that only the officers and directors of the M. Moore Transportation Co., when the trips of the Mollie Moore and the other boats belonging to respondents should make their trips; that while the public designated such boats and others as the Kountz line, and while the words "Kountz Line" were used generally in the heading of advertisements of boats, the steamboats belonging to respondents were not the property of the Kountz line, were not in fact a part of any line, did its business in the name of each boat with which or by which business was transacted, and respondent did not share or participate in the earnings or profits of any other boats except the Mollie Moore, D. H. Rucker, C. H. Tompkins, and J. B. M. Kehlor.

That the title "Kountz Line" was only used as a designation and for convenience and not because of any common interest between said steamboats and this respondent's boats nor the Kountz
80 line, for there was none and never have been, and in all other respects this respondent, not being cognizant of the facts concerning the condition, lading, running, and management of the Henry C. Yeager, this respondent can only answer from information and belief; and respondent is informed and believes that the facts are, and it so avers, as are set forth in the answer of the Kountz Line & *al.* to this article, and it therefore adopts it as its own.

12th. Answer to the 10th article of said libel: Respondent denies that the statements therein made are true, and says that the truth is that neither this respondent nor its officers or agents had anything to do with the placing or shipping goods on the st'b't Henry C. Yeager, and respondent cannot in any manner be held liable therefor. But respondent further says, and it so believes and avers, that the facts are as are alleged in the answer of the Kountz Line & *al.* to this article, and it hereby adopts the same as its answer hereto.

13th. Answer to 11th article of said libel: That as to the matters and things therein alleged this respondent knows nothing, and neither confesses nor denies the same, but will require strict proof thereof. Respondent specially denies the right of libellants
81 to sue for and receive the value of the merchandize laden thereon.

14th. Answer to 12th article of said libel: Respondent says the matters and things therein set forth are not true, but the truth and facts are as herein set forth, in these several answers, and in the answers of the Kountz Line & *al.* filed in this cause and adopted as the answers of respondent.

15th. And respondent, further answering, says that this respondent is in no manner responsible for any loss occasioned by the sinking of the st'b't Henry C. Yeager, nor for the conduct or misconduct of her owners, agents, officers, or crew thereof, and that the seizure of respondent's steamer, the J. B. M. Kehlor, a large and valuable vessel, and the illegal detention thereof, is a great wrong and damage to this respondent, for which he reserves the right to sue hereafter.

Therefore this respondent prays that this hon. court will be pleased to pronounce against the libel herein, and that the libellants be required to enter into a stipulation, with good and solvent surety, to cover all damages to this respondent by the unwarranted, illegal, and wrongful seizure of respondent's steamboat J. B. M. Kehlor, and that said libel be dismissed with all cost, and for general relief.

(Signed) THOS. ROGERS, JR.

(Signed) SINGLETON & BROWN, *Proctors.*

82 Sworn to and subscribed before me this 13th April, 1881.

(Signed) R. DEVONSHIRE,
D'y Clerk.

Separate Answer of the K. P. Kountz Transportation Company. Filed April 14, '81.

CITIZENS' INS. CO. & *al.*
vs.
THE KOUNTZ LINE & *al.*
} No. 11712.

To the hon. the district court of the U. S. for the eastern district of Louisiana:

The separate answer of the K. P. Kountz Transportation Company, a body corporate under and by virtue of the law of Missouri and having its domicil in the city of St. Louis, in said State, sole owners of the steamboat Katie P. Kountz, attached herein by virtue of a warrant of arrest *in personam* and now in the custody of the marshal of this district, and herein intervening for its interest to the libel *in personam* of the Citizens' Insurance Company & *al. vs.* the Kountz Line & *al.*, in a matter of tort, doth allege and articulately propound as follows:

1st. That your respondent is the sole and only owners of the st'b't Katie P. Kountz, a vessel of about — tons burden, now in custody of the marshal by virtue of a warrant of arrest *in personam* in the above entitled and numbered cause, and that no other person
83 or persons, corporation or corporations, have any interest in or control over said steamboat.

2nd. That the attachment or seizure of said steamboat Katie P. Kountz by the U. S. marshal for this district, under the process issued herein, was illegal and unwarranted by law, and this hon. court is without jurisdiction as to said steamboat, the property of respondent, for the reason that the libellants prayed in their libel

for an attachment of the property of respondent only in the event respondent could not be found.

That respondent, represented by its president, W. J. Kountz, was and had been within the jurisdiction of this court prior to the seizure of said steamboat. Respondent's property and — had been actually served with citation by the marshal, in his individual capacity, and was ready and willing and offered to accept service of process for respondent as president thereof, but the marshal refused to make service thereof, and the said marshal actualy knew nothing of the presence of said steamboat until he was informed of said fact by W. J. Kountz, president.

That the order directing said seizure and the issuing of process was signed by the judge of this court when out of the district of Louisiana, to wit, while in Washington city, District of Columbia.

84 That the libellants presisted in forcing said marshal to seize defendants' property, altho' they well knew that this respondent was represented in this district by its president, the said W. J. Kountz, and was willing to be personally cited and to appear and answer, and that no judgment or decree can be pronounced against the property of the respondent so brought into court.

And this respondent, not waiving in any manner its rights to contest the regularity and legality of the seizure of its property and mode by which it has been compelled to make an appearance to claim and defend said property and rights, answers articulately to the several articles of said libel as follows:

3rd. To the 1st article of said libel: That the matters and things therein set forth are, as respondent is informed and believes and it so avers are in great part untruly and falsely alleged and pleaded; that the truth and facts are as are set forth in the answer to the 1st article of said libel made in this cause by the Kountz line, W. J. Kountz, John W. King, and The Henry C. Yeager Transportation Company, and respondent adopts said answers as its answer hereto and prays that the same may be taken and considered as a part hereof.

4th. To the 2nd article of said libel: That the matters and
85 things set forth in said article are in great part untrue, and respondent avers that the truth is as is set forth in the answer of the Kountz line & *al.* to said article, and this respondent adopts the same as its answer and prays that it may be taken and considered as its answer hereto.

5th. To the 3rd article of said libel: That the matters and things set forth in said article are in great part untrue, and the facts are, as this respondent is informed and believes, and so avers, as are set forth in the answer of the Kountz line & *al.* to said 3rd article and filed in this case, and this respondent adopts the same as its answer, except as hereafter specially set forth.

And respondent, further answering, says that respondent's business was advertised by the Kountz line, but that its bills of lading were signed by the officers, duly authorized, of the st'b't Katie P.

Kountz, or its agent, but said property was not held out as the property of the Kountz line.

6th. To the 4th article of said libel respondent avers that the matters and things therein set forth are in great part untrue; that the facts are as are set forth in the answer to this article of the Kountz line & *al.*, herein filed, and this respondent adopts the same as its answer.

Respondent admits the incorporation of the K. P. Kountz
86 Transportation Company on the 30th day of Nov'ber, 1872, but it specially avers that the capitol stock of said company was issued and accepted by the owners of the st'b't Katie P. Kountz for their interest therein, and the stock of said company is now held and owned by the original owners of said steamboat, or those to whom the same has been sold and transferred.

7th. To the 5th article of said libel respondent avers that the matters and things therein set forth are untruly alleged and pleaded, and the facts are as set forth in the answer of the Kountz line & *al.* to this article, and respondent adopts the same as its answer hereto.

And respondent avers that all the proceedings taken for its incorporation were strictly in conformity to the law of Missouri, and the law of that State requires the name of the corporators and its officers and directors to be mentioned.

Respondent admits that Kountz and King have been directors, but they have not been sole directors, nor are they now the chief stockholders.

8th. To the 6th article of the libel respondent avers that the matters and things therein alleged are untrue, and respondent is informed and believes that the facts are truly set forth in the answer of the Kountz line & *al.* to this article, and respondent adopts
87 the same as its answer hereto and prays that the same be taken as its answer hereto.

But respondent specially denies that Kountz, King, and Sheble were the real and substantial owners of the st'b't Katie P. Kountz, or that Kountz, King, and Sheble ever at any time sold or executed any bill of sale of said steamboat to this respondent, and avers that W. J. Kountz being the owner of $\frac{1}{16}$ of said steamboat and Wm. Braithwaite being the owner of $\frac{1}{16}$ of the said steamboat, sold their respective interests to this respondent, W. J. Kountz, on the 11th January, 1873, and Wm. Braithwaite the 10th April, 1873, and accepted in payment therefor the stock of respondent.

9th. To the 7th article of said libel respondent avers that the matters and things therein set forth are in great part untruly alleged and pleaded, and respondent says that its steamboat Katie P. Kountz has, ever since the steamboat became its property, been solely managed and controlled and run in the interest of this respondent; that its earnings are not and have not been in any manner shared or participated in by any person or persons, corporation or corporations whatsoever; nor has respondent shared or participated in the management, control, or running of any other steamboat or steamboats. And that as to all the other matters and things herein necessary to be answered, the same are truly set forth,

88 as respondent is informed and believes, in the answer of the Kountz line & *al.* to the 7th article of this libel, and which respondent hereby avers the same to be true and adopts it as its own hereto.

10th. To the 8th article of said libel, respondent says that the matters and things therein alleged are in great part untrue, and the truth and facts are, as this respondent is informed & believes and so avers, as are set forth in the answer of the Kountz line & *al.* to article 8th of said libel, and it prays leave to adopt the same as its answer hereto, and that it may be taken and considered as such.

Respondent specially answers that it had no connection or interest in said matters and was not present, nor did it have any personal knowledge or cognizance or part in the lading or running the steamboat H'y C. Yeager, and even should it be held that any blame attached or that the Yeager, her agents, officers, or managers, were guilty of negligence, this respondent is in no manner liable or responsible therefor, and respondent neither shared in her profits nor her losses nor had anything to do with her management or control.

11th. To the 9th article of said libel respondent says that the matters and things therein alleged are untrue, and that the truth and fact is that only the officers and directors of the K. P. Kountz

89 Transportation Company decided when the trips of the st'boat Katie P. Kountz should make her trips; that while the public designated the boats and others as the Kountz line, and while the words "Kountz line" were used generally in the heading of the advertisements of boats running from the Kountz line wharf boat, the Katie P. Kountz was not the property of the Kountz line—was not in fact a part of any line—did its business in its own name, and did not share or participate in the earnings or profits of any other steamboat, nor in the management, control, or direction of any steamboat or steamboats, nor did any other steamboat, person, or corporation, or corporations share or participate in the management, control, direction, or earnings of respondent's said boat.

That the title Kountz line was used only as a mere designation and for convenience, and not because any community of interest between the various steamboats and respondent's said steamboat, nor between the Kountz line and this respondent, for there was none and never has been.

And in all other respects this respondent, not being cognizant of the facts concerning the condition, running, and management of the st'b't H'y C. Yeager, this respondent can only answer from information and belief, and respondent is informed and be-

90 lieves that the facts are as set forth in the answer of the Kountz Line & *als.*, and this respondent so avers that the facts are as set forth in said answer, and it therefore adopts the same as its answer hereto.

12th. To the 10th article of said libel respondent says that the statements therein made are untrue, and it avers that the facts are that neither this respondent nor its agents or officers had anything to do with placing, putting, or shipping goods or freight on the

steamboat Henry C. Yeager, and this respondent is not and cannot be held liable therefor in any manner.

And respondent further says, and it so believes and avers, that the facts are as are alleged, pleaded, and set forth in the answer of the Kountz Line & *al.* to this article, and it adopts the same as its answer hereto.

13th. Answer to the 11th article of said libel: That as to the matters and things herein alleged and pleaded this respondent is not informed and neither confesses nor denies the same, but will require strict proof thereof; but respondent denies the right of the libellants to sue for and recover for the value of the merchandise laden thereon.

14th. Answer to 12th article of said libel: Respondent says that the matters and things therein set forth are not true, but the
91 truth and facts are as are herein set forth in these several answers and in the answers of the Kountz Line & *al.* filed in this cause and as herein adopted and made respondent's own.

15th. And respondent, further answering, says that this respondent is in no manner responsible for any loss occasioned by the sinking of the steamboat Henry C. Yeager, nor for the conduct or misconduct of the owners, officers, or agents or crew thereof, and that the seizure of respondent's steamboat, the Katie P. Kountz, a large and valuable vessel, and the illegal detention thereof, is a great wrong and damage to this respondent, for which it reserves the right to sue hereafter.

Wherefore this respondent asks that this hon. court will be pleased to pronounce against the libel herein; that the libellants be required to enter into a stipulation with good and solvent surety to cover all damages to this respondent by the unwarrantable, illegal, and wrongful seizure of respondant's steamboat, the Katie P. Kountz, and that said libel be dismissed with costs, and for general relief.

(Signed) THOMAS ROGERS, *Ag't,*

(Signed) SINGLETON & BROWN, *Proctors.*

Sworn to and subscribed before me this 14th April, 1881.

(Signed) R. DEVONSHIRE,
D'y Clerk.

92 *Rule to Sell Steamers. Entered Ap'l 18th,* 1881.

CITIZENS' INS'CE CO. & *al.*
vs.
KOUNTZ LINE & *al.*
No. 11712.

The libellants, by their proctor, this day moving the court to order the sale of the steamers, J. B. M. Kehlor and Katie P. Kountz, based upon affidavit, after hearing R. H. Brown, Esq., for defendants, opposing the sale prayed for—

It was ordered by the court that the application be refused, with leave to libellants to renew the same hereafter.

Renewal of Rule to Sell. June 13th, 1881.

CITIZENS' INS'CE CO. & *al.*
vs.
KOUNTZ LINE & *als.* } 11712.

On motion of J. A. Campbell and O. B. Sansum, proctors for libellants, ordered that def'ts show cause on to-morrow, at 11 a. m., why the steamers J. B. M. Kehlor and Katie P. Kountz shall not be sold and the proceeds of said sale deposited in the registry of the court.

June 14th.—Rule continued to 15th,

Order Denying Motion to Sell. June 15th, 1881.

The rule to sell steamers continued from yesterday came
93 up again, and, in consideration of the affidavits touching the value of said boats, it was ordered that the application be denied without prejudice of renewing the same on good cause shown.

Renewal of Rule to Sell and Submission. Entered December 9th, 1881.

CITIZENS' INS. CO. & *al.*
vs.
KOUNTZ LINE & *al.* } No. 11712.

The rule of the 13th June, '81, to sell the steamers J. B. M. Kehlor and Katie P. Kountz was this day taken up.

Present: O. B. Sansum, for movers; Singleton and Brown, for def'ts.

And, after hearing argument and certain affidavits on behalf of libellants, the court took time to advise.

Order to Sell Steamers if not Bonded within 10 Days.

CITIZENS' INS'CE CO. & *al.*
vs.
KOUNTZ LINE & *al.* } No. 11712.

DEC'R 13TH, 1881.

The court, having duly considered the application for the sale of the steamers J. B. M. Kehlor and Katie P. Kountz and the argument of counsel thereon, doth now order that unless the respondents do within ten days from this date bond said steamers an order
94 of sale issue commanding the marshal to sell said steamers in due course of law.

Order to Issue a Writ of Venditioni Exponas.

CITIZENS' INS. CO. & *al. vs.* KOUNTZ LINE & *al.*

DEC'R 24TH, 1881.

The time allowed in the order of the 13th Dec'ber, 1881, for bonding the steamers J. B. M. Kehlor and Katie P. Kountz having ex-

pired and respondents having failed to furnish bond and security for the release of the vessels—

Ordered, That said steamers be sold by the U. S. marshal in 10 days' public notice, that a writ of *rendition- exponas* issue accordingly, and that the proceeds of sale be deposited in the registry to abide the further action of the court.

Writ of Vendition- Exponas. Issued 24th Dec'r, 1881.

United States District Court, Eastern District of Louisiana.

The President of the United States of America to the marshal of the eastern district of Louisiana or either of his deputies, Greeting:

Whereas, at a district court of the U. S. holden at New Orleans for and within said district on the 24th day of December,
95 A. D. 1881, the steamers J. B. M. Kehlor and Katie P. Kountz were, after due proceedings, ordered to be sold at public auction:

These are, therefore, to command you to sell to the highest bidder at public auction, at ——, within said district, on the — day of ——, at — o'clock, the said steamers, first giving 10 days' notice, at least, of the time and place of sale by advertising the same in one of the newspapers printed at New Orleans and by proclamation in the usual form on the day of sale, the money arising from the sale to be paid into the registry of said court, to be disposed of as the law in this case directs.

Witness the Honorable Edward C. Billings, at New Orleans, this 24th day of December, A. D. 1881, and 106 year of the Independence of the U. S. of America.

[SEAL.] (Signed) K. LOEW,
D'y Clerk.

Marshal's Return.

U. S. OF AMERICA, *District of Louisiana:*

NEW ORLEANS, *Dec'r 24th*, 1881.

Pursuant to this precept I have caused the steamboats J. B. M. Kehlor and Katie P. Kountz, within named, to be sold by public auction and to the highest bidder, at the main entrance to
96 the custom-house, on Canal St., in this city, on the day, hour, and place therein directed, having given 10 days' previous notice of the time, place, and manner of the sale in the New Orleans Picayune, a newspaper printed in the city of New Orleans, and by the crier on the day of sale, and at such sale the purchasers were as under:

Sold the st'b't Katie P. Kountz to D. C. McCan for-----	$2,200 00
Sold the steamboat J. B. M. Kehlor to W. H. Thorwegan for----------	10,100 00
	$12,300 00

(Signed) C. R. STEELE,
D'y U. S. Marshal.

Whereby the net sales amounted to $10,000, which I pay over to Jno. Devonshire, the clerk of the court aforesaid, to be disposed of as the court directs.

C. R. STEELE.

Attest: JACK WHARTON, *Marshal.*

Received from Jack Wharton, U. S. Marshal, ten thousand dollars (being, as he saith), the proceeds of the foregoing sale, the moneys to be disposed of as the court directs, and for which I have signed duplicate receipts.

New Orleans, Jan'y 9th, 1882.

(Signed) J. DEVONSHIRE, *Clerk.*

Publication of Sale Attached. United States Marshal's Sale.

97 In the U. S. District Court for the Eastern District of Louisiana.

CITIZENS' INS'CE COMPANY & *al.* vs. KOUNTZ LINE & *al.* } No. 11712.

By virtue of a writ of *venditioni exponas*, to me directed in the above-entitled suit, I will proceed to sell to the highest bidder, on Monday, the 9th day of January, 1882, at 12 o'clock m., at the main entrance to the custom-house, on Canal street, in New Orleans, the following-described property, to wit:

1st. The steamboat Katie P. Kountz, her tackle, apparel, machinery, &c., as she now lies at the foot of Adams and Reynes streets, third district of this city.

2d. The steamboat J. B. M. Kehlor, her tackle, apparel, machinery, &c., as she now lies [at] foot of Adams and Reynes streets, third district of this city.

Seized in the above suit. Terms, cash on the spot.

United States marshal's office, New Orleans, 24th day of December, 1881.

(Signed) JACK WHARTON,
U. S. Marshal for the Eastern District of Louisiana.

Dec. 25, 28, 31; J'y 2, 5, 7, 9.

Nov'ber 19th, 1881.—Cause for fixed for trial.

Dec'ber 2nd, 1881.—Continued to 16th Dec'r on the application of defendants.

98 Dec'ber 16th, 1881.—In this case, assigned for trial this day, after hearing proctors for both parties, it was ordered that the hearing be continued till Monday, 19th instant.

December 19th, 1881.—Cause laid over till to-morrow at 12 m.

Hearing. December 20th, 1881.

CITIZENS' INSURANCE CO. & *al.*
vs.
KOUNTZ LINE & *al.*
} No. 11712.

This cause came on for trial, O. B. Sansum and J. A. Campbell for libellants; Singleton & Brown and G. H. Shields for claimants.

And after hearing the pleading and evidence and argument, the libellants offer*ing* the depositions of witnesses, as follows: Deposition- of John W. King, Wm. G. Wagner, John Hardesty, G. W. Madison, E. A. Sheble, A. Sandford, A. J. Buck, Geo. M. Connell, A. C. Warpell, J. H. Hanna, Henry Adkins, Hiram Davis, E. J. Meyers, Jno. Bird, C. H. Campfield, J. H. Waterworth, J. P. Harrison, Ch's W. Coffin, Hiram Hazlett, Geo. Bain, and Francis T. de Viard; also all the exhibits referred to in all the said depo-
99 sitions, and five papers referred to by John W. King in his testimony—one stamped Kountz line, another stamped M. Moore Transportation Co., another stamped K. P. Kountz Transportation Co., another stamped C. V. Kountz Transportation Co., another stamped the Henry C. Yeager Transportation Company.

Defendants offer*ing* the testimony of W. J. Kountz, Thos. Rogers, J. C. Van Hook, C. H. Seaman, Jas. Mahoney, A. L. Ryland, T. P. Morse, E. McPherson, Ch's Scott, Jno Smith, R. R. Kilpatrick, H'y C. Partie, H'y A. Eales, J. C. Montgomery, Will. Houston, Jno. Phifer, Jas Smith, Mich'l Garrity, J'ph A. Captedo, John Spvaggen; the charter of Kountz line; charter M. Moore Transp. Co.; charter H. C. Yeager Transp. Co.; charter C. V. Kountz Transp. Co.; charter K. P. Kountz Transp. Co.; diagram or plan of st'b't H. C. Yeager; license, &c., of st'b't K. P. Kountz; license, &c., of st'b't J. B. M. Kehlor; 1872, statutes of Missouri as to compliance with law touching corporations; certificate of inspection, H. C. Yeager, Oct. 10, '79, local inspector H. Adkins; cert. insp., 48, Jan'y 3, '80; enrolment H. C. Yeager; protest st'r H. C. Yeager; dray tickets; 4 bills of sale: certificate ownership st'r Mollie Moore; bills and postal cards show-
ing Kountz line not always used advertisements of other boats
100 when they run from the Kountz line wharf, showing Kountz line used them also; license of H'y C. Yeager.

The libel, claim, and answer in suit Cooley *vs.* St'r J. F. Tolle, No. 10834, U. S. dist. court.

Libel, claim, and answer, suit J. F. Tolle *vs.* St'r Morgan, No. 11058.

Libel, claim, and answer, suit O'Donnell *vs.* St'r Rucker, No. 11299.

Libel, claim, and answer, Salter *vs.* Rucker, No. 11309.

Libel, claim, and answer; Arrington *vs.* J. D. Scully, 11384.

Libel, claim, and answer, Scott *vs.* Kountz, 11561.

Libel, claim, and answer, Suer *vs.* Rucker, 11583.

The statement of R. H. Brown that W. J. Kountz, pres., and Jno. W. King, secretary, were tendered to the marshal of this district to be served in their official capacities, and that he refused to serve them.

Object to all testimony; object to statements of shares of stock not

identified or sworn to; object to all printed publications as irrelevant, encumbering record.

And it being now 3 p. m. the further hearing was continued till this day at 7 p. m., until which time the court took a recess.

Evening Session.

TUESDAY, *Dec'r* 20, 1881.

At 7 p. m. the trial of this cause was resumed and, after further argument, the same was continued till Thursday, 22d instant, at 10 a. m.

101 THURSDAY 22ND, 1881.

Cause argued and continued to 23rd, at 9 a. m.

Submission. Dec'ber 23rd, 1881.

CITIZENS' INS. CO. & *al.*
vs.
KOUNTZ LINE. } 11712.

The trial of this cause was resumed, and, after hearing further argument, the court took time to consider, 3 days being allowed the proctors to submit briefs.

Judgment Dismissing Libel. Feb'ry 20th, 1882.

CITIZENS' INS'CE COMPANY & *al.*
vs.
KOUNTZ LINE & *al.* } 11712.

This cause came on to be heard at the last term of the court and was argued by counsel; and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed by the court that the writ of attachment herein issued be, and the same is hereby, dis-olved & libel dismissed at libellants' costs.

Judgment signed 24th Feb'y, 1882.

(Signed) EDWARD C. BILLINGS, *Judge.*

Application for Appeal. Filed Feb'ry 28th, 1882.

CITIZENS' INS'CE CO. & *al.*
vs.
KOUNTZ LINE & Others. } 11712.

102 The libellants pray an appeal from the decree of this court rendered in this suit in this court to the next circuit court of the United States, to be held in this district at the time appointed by law, and ask the court to fix the amount of the bond to be given by the libellants, and to fix the time for filing the same.

(Signed) O. B. SANSUM,
(") J. A. CAMPBELL,
Proctors in the Cause.

Order on Petition.

An appeal to operate as a supersedeas is allowed in this case as prayed for and according to law, returnable to the circuit court of the U. S. for the eastern district of Louisiana, at its next term (the 4th Monday of April, 1882), on the appellants giving bond and security in the sum of $5,000.

Feb'y 28th, 1882.

(Signed) EDWARD C. BILLINGS, *Judge.*

CITIZENS' INS'CE CO. & *als.*
vs.
KOUNTZ LINE & *al.* } 11712.

Upon the application of the libellants the court this day granted them a suspensive appeal from the judgment in this cause, returnable in the U. S. circuit court for this district on [the] 4th
103 Monday of April, 1882, in giving bonds in the sum of $5,000.

Extract from the Minutes of the 28th February, 1882.

On the 24th April, 1882, the return day of the appeal was extended to the 4th Monday in May, 1882.

Appeal Bond.

UNITED STATES OF AMERICA, *Eastern District of Louisiana:*

District Court *Court* of the United States. In Admiralty.

CITIZENS' INS. CO. OF MISSOURI, NORTHWESTERN NAT. Ins'ce Company, Orient Mut. Ins'ce Company, Washington Fire & Marine Ins. Co., Crescent Ins'ce Company, Rhenish Westphalian Lloyd, Sun Mutual Ins'ce Company, Hibernia Insurance Company
vs.
KOUNTZ LINE & *al.* } No. 11712.

Appeal bond.

Know all men by these presents that we, Citizens' Ins'ce Company of Missouri, Northwestern Nat. Ins'ce Co., Orient Mut. Ins'ce Co., Washington Fire and Marine Ins'ce Co., Crescent Ins'ce Company, Rhenish Westphalian Lloyd, Sun Mut. Ins'ce Comp'y, Hibernia Insurance Company, as principals, and John Henderson and Albert Baldwin, as sureties, are held and firmly bound unto K. P. Kountz Transportation Company, M. Moore Transportation Co.,
104 Kountz Line, C. V. Kountz Transportation Co., H. C. Yeager Transportation Co., William J. Kountz, and John W. King in the sum of five thousand dollars, to be paid to the said K. P. Kountz Transportation Co., M. Moore Transportation Co., Kountz line, C. V. Kountz Transportation Co., H. C. Yeager Transportation Co., William J. Kountz, and John W. King, for the payment of which, well and truly to be made in lawful money of the United States, we bind ourselves, and each of us, our and each of our heirs,

executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seal and dated at New Orleans the 3rd day of March, 1882.

Whereas the above-named Citizens' Ins'ce Company, Northwestern Nat. Ins'ce Co., Orient Mut. Ins'ce Co., Washington Fire & Marine Ins. Co., Crescent Ins'ce Co., Rhenish Westphalian Lloyd, Sun Mutual Ins. Co., and Hibernia Insurance Company have appealed to the next term of the circuit court of the United States for the 5th circuit and eastern district of Louisiana from a final judgment of the district court of the United States for said district rendered against them on the 20th day of February, 1882, and signed on the — day of February, 1882, in the above-entitled cause:

Now, therefore, the condition of this obligation is such that
105 if the above-named appellant- shall prosecute their appeal to effect and answer all damages and costs and satisfy whatever judgment may be rendered against them if they fail to make their appeal good, then this obligation to be void; otherwise the same shall be and remain in full force and effect.

CITIZENS' INS. CO. OF MO.,
NORTHWESTERN NAT. INS. CO.,
ORIENT MUT. INS. CO.,
WASHINGTON FIRE & MARINE INS. CO.,
By O. B. SANSUM, *Their Proctor.*
SUN MUT. INS. CO.,
JAMES I. DAY, *Pres't.*
CRESCENT INS. CO.,
W. R. LYMAN, *Pres't.*
HIBERNIA INS. CO.,
JOHN HENDERSON.
JOHN HENDERSON, *Surety.*
A. BALDWIN, *Surety.*

Signed, sealed, and delivered in presence of—
O. B. SANSUM.

Bond approved.
March 6th, 1882.
(S'g'd) EDWARD C. BILLINGS, *Judge.*

Citation of Appeal.

United States District Court, Eastern District of Louisiana.

CITIZENS' INS. COMPANY & *al.*
vs.
KOUNTZ LINE & *al.*
} No. 11712.

The United States of America to the C. V. Kountz Transportation Co., the K. P. Kountz Transportation Co., the H. C. Yeager Transportation Co., the Kountz line, & the M. Moore Transportation Co. to W. J. Kountz and Jno. W. King, Greeting:

106 You are hereby cited and admonished to be and appear before the circuit court of the United States for the 5th circuit

and district of Louisiana at its next term, to be holden in the city of New Orleans, State of Louisiana, to answer the appeal taken by the libellants in this cause, and that you show cause then and there, if any there be, why the judgment rendered against the said libellants on 20th Feb'y, 1882, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable E. C. Billings, judge, this 4th March, in the year of our Lord, 1882, and the 106 of the American Independence.

(Signed) EDWARD C. BILLINGS, *Judge.*

Marshal's Return.

Received Mar. 4th, 1882, by the U. S. marshal, and on the 8th day of March, 1882, I served a true copy of the within citation of appeal on Singleton and Brown, Esqrs., by handing the same to R. H. Brown, Esqr., in person, in this city.

(Signed) JESSE WHARTON,
D'y Marshal.

Intervention of W. G. Wilmot & Co. Filed Jan'y 9, 1882.

107 CITIZENS' INS'CE CO. & *al.* *vs.* KOUNTZ LINE & *al.* } 11712.

To the Hon. E. C. Billings, judge of the U. S. dist. court, E. dist. of La.:

The libel of intervention of W. G. Wilmot & Co., a commercial firm doing business as coal merchants at New Orleans, La., and composed of Willis G. Wilmot, a resident of New Orleans, and Thomas Fawcett, Jr., a resident of Pittsburgh, Pa., against the steamboat J. B. M. Kehlor and Katie P. Kountz, libelled in the above suit, whereof —— —— are now, or late were, masters, their tackle, apparel, machinery, and furniture, now lying in the port of New Orleans, and against all persons claiming any interest therein, in a cause of contract, civil and maritime, alleges as follows:

1st. That the steamers J. B. M. Kehlor and Katie P. Kountz, whereof —— —— are now, or lately were, masters, are enrolled in the port of St. Louis, Mo., their home port, to pursue the coasting trade, and were in the month- of March, April, May, June, July, August, Sept., and November and Dec'ber, 1880, and Feb'y and March, 1881, engaged in the business of carrying freight and passen-
108 gers for here between the ports of New Orleans and St. Louis, Mo.

2nd. That the steamers J. B. M. Kehlor & Katie P. Kountz belong to what is known as the Kountz line, a chartered corporation domiciled in St. Louis, Mo.

3rd. That the steamers J. B. M. Kehlor and Katie P. Kountz, being in the port of New Orleans on the 15th of April, 1880, and also on 17 & 20 of April, 1880; and also on the 21 May, 22 June, 27 July, 28 July, 27 Aug., 27 Sept., 5 Nov'ber, 31 Dec'r, 1880; and on 25

Jan'y, 3 Feb'y, 1881, and 25 March, 1880, and designated on their aforesaid voyages, and being in need of coal for fuel for said boats, the masters of said boats applied to and requested your libellants to furnish the same, which they did to the value of $1,712.50, and also, at the request of the master of the Katie P. Kountz, towed said boat from the landing at New Orleans to Algiers on March 10th, 1880; on March 20th do. from Algiers to Thalia St.; and on Jan'y 25th, 1881, also towed said boat from New Orleans l'd'g to Algiers, which was $10 for each trip; and also, at the request of the master of said st'b't J. B. M. Kehlor, on 1st March, 1881, for labor in putting on and taking off 900 boxes of coal from said st'b't J. B. M. Kehlor, owing to seizure of boat by U. S. marshal, which labor was worth $45; making a total claim of libellants against said st'b'ts [of]
109 $1,787.50, all of which will more fully appear from the due-bills and accounts hereunto annexed and made part of this libel.

4th. That the said coal and towage were necessary for the use of said boats, and the amount due now to libellants on the same is the sum of $1,787.50, with 5 % from the respective dates, as shown by the due bills and acc'ts, and that by law libellants have a lien on said boats to secure the payment on the same.

4. That all and singular the promises are true and within the admiralty and mari*n*tim*e* jurisdiction of the U. S. and this hon. court.

Wherefore libellants pray that this libel of intervention be filed and that process in due form of law and according to the course of this hon. court in causes of admiralty and mari*n*tim*e* jurisdiction may issue against the said st'b'ts J. B. M. Kehlor & Katie P. Kountz, their tackle, apparel, machinery, and furniture, and that all persons claiming any interest therein may be cited and admonished to appear and answer the matters aforesaid, and after due proceedings had that this hon. court will be pleased to decree the payment of libellants' aforesaid claim, with 5 % interest from the dates, as shown by the bills and acc'ts herein filed, and all costs of suit; that libellants' privilege be recognized on said boats, and for such other
110 and further relief as the nature of the case may require and this court is competent to give.

(Signed) W. G. WILMOT.

Sworn to and subscribed before me this 7th Jan'y, 1882.

(Signed) J. DEVONSHIRE,
U. S. Com'r.

H. H. WALSH, *Proctor.*

Account against the Kehlor.

St'r J. B. M. Kehlor to W. G. Wilmot & Co.

1880.

Ap'l	15th.	For 100 boxes coal at Baton Rouge			----------	50
"	17.	" 300	"	"	----------	150
"	20.	" 200	"	"	----------	100
May	21.	" 200	"	"	----------	100

July	27.	For 400 boxes coal at 45 cts.			180
"	28.	" 100	"	"	45
Aug.	27.	" 300	"	"	135
Sept.	27.	" 300	"	"	135
Nov.	5.	" 400	"	50 cts.	200
'81.					
Feb'y	26.	" 150	"	"	97 50
M'ch	1.	Labor putting on & taking off 900 boxes coal, owing to seizure of boat by U. S. marshal			45
					1,312 50

Acc't against the Katie P. Kountz.

St'r Katie P. Kountz to W. G. Wilmot & Co.

1880.					
M'ch	10th.	For towage from l'd'g to Algiers			10
"	24th.	" " Algiers to Thalia St.			10
	"	25.	150 boxes coal @ 50 cts.		75
111	Dec.	31st.	500 boxes coal @ 50 cts.		250
'81.					
Feb'y	3d.	200	" " 60	"	120
Jan'y	25th.	Towage from l'd'g to Algiers			10
					475

Due Bills—Kehlor.

BATON ROUGE, *April 15th*, 1880.

Due Coyle, Wilmot & Co. fifty dollars for 100 boxes coal @ 50 cts. per box, steamboat J. B. M. Kehlor and owners.

(Signed) W. C. KIMBER, *Clerk.*

$150. NEW ORLEANS, *April 17th*, 1880.

Due W. G. Wilmot & Co. $150 for 300 boxes coal at 50 cts. per box, st'b't J. B. M. Kehlor & owners.

(Signed) W. C. KEMBER, *Clerk.*

$100. BATON ROUGE, *April 20th*, 1880.

Due Coyle, Wilmot & Co. $100 for 200 boxes coal at 50 cts. per box, st'b't J. B. M. Kehlor & owners.

(Signed) W. C. KIMBER, *Clerk.*

$100. NEW ORLEANS, *May 21st*, 1880.

Due W. G. Wilmot & Co. $100 for 200 boxes coal at 50 cts. per box, st'r J. B. M. Kehlor & owners.

(Signed) W. C. KIMBER, *Clerk.*

NEW ORLEANS, *June 22d*, 1880.

Due W. G. Wilmot & Co. $75 for 150 boxes coal at 50 cts. per box, st'r J. B. M. Kehlor.

(Signed) W. C. KIMBER, *Clerk.*

NEW ORLEANS, *July 27th*, 1880.

Due W. G. Wilmot & Co. $180 for 400 boxes coal at 45 cts. per box, steamer J. B. M. Kehlor and owners.

W. C. KIMBER, *Clerk.*

112 NEW ORL'S, *July 28th*, 1880.

Due W. G. Wilmot & Co. $45 for 100 boxes coal at 45 cts. per box, st'r J. B. M. Kehlor & owners.

(Signed) W. C. KIMBER, *Clerk.*

NEW ORL'S, *Aug.* 27, 1880.

Due W. G. Wilmot & Co. $135 for 300 boxes coal at 45 cts. per box, st'b't J. B. M. Kehlor & owners.

S. H. HARRES, *Clerk.*

NEW ORLEANS, *Sept. 27th*, 1880.

Due W. G. Wilmot & Co. — for 300 boxes coal at 45 cts. per box, st'b't J. B. M. Kehlor & owners.

(Signed) GEO. H. ALCOKE, *Clerk.*

NEW ORLEANS, *Nov. 5th*, 1880.

Due W. G. Wilmot & Co. $200 for 400 boxes coal at 50 c. per box, steamer J. B. M. Kehlor & owners.

(Signed) S. H. HAINES, *Clerk.*

BATON ROUGE, *Feb'y* 26, 1881.

Due Coyle, Wilmot & Co. $97.50 for 150 boxes coal at 60 cts. per box, st'b't J. B. M. Kehlor & owners.

(Signed) W. C. KIMBER, *Clerk.*

Intervention of P. Lehman. Filed Jan'y 10th, 1882.

John W. Davitt and Henry C. Hollman & Co., a firm composed of Henry C. Hollman and —— ——, all domiciled in St. Louis, and residents of the State of Missouri, and the Barnard Coal and Transportation Co., a corporation created under the laws of the State of Missouri, and domiciled at Chester, in said State, against the
113 st'boats J. B. M. Kehlor and Katie P. Kountz, their engines, machinery, &c., and ag'st all persons intervening for their interests therein, in a cause, civil and maritime, for goods, stores, supplies, and material furnished to and upon said steam boats, alleges & propounds as follows:

1st. That said st'boats, J. B. M. Kehlor, whereof —— —— is master, and Katie P. Kountz, whereof —— —— is master, are now in the custody of the marshal of this district by virtue of process duly issued to him out of this hon. court in a cause entitled Citizens' Ins. Co. & others *vs.* Kountz Line & others, No. 11712 on the docket, and that said steamboats are about to be sold by the said marshal in compliance with an order of sale issued in said cause.

2nd. That said steamboats each are vessels of the burthen of over 20 tons, and lately were engaged in navigating the Miss. river and other streams tributary thereto, navigable waters of the U. S., and within their admiralty and maritime jurisdiction, and were thus engaged in commerce, carrying goods and passengers for hire, at the dates hereinafter mentioned.

3rd. That said st'b'ts, J. B. M. Kehlor and Katie P. Kountz, being at the port of St. Louis, Mo., upon the dates hereinafter mentioned and referred to in exhibits annexed, in the months of Sept., Oct'r, Nov'r, and Dec'ber, 1880, and being in need of certain goods, stores, supplies, and materials to enable said st'boats to prosecute their intended voyages, the masters of said st'boats applied to the aforesaid intervening libellants and requested them to furnish to said st'boats the good, stores, supplies, and materials described in annxed Exhibit- "A," B, C, D, E, & F, which request said intervening libellants complied with and furnished and delivered to said steamboats goods, stores, supplies, & materials for the use and benefit of said steamboats, and which were necessary to enable them to prosecute their intended voyages to the full value and amount as follows:

P. Lehman, as per Exhibit "A" annexed & made part hereof, sold and delivered to the st'r J. B. M. Kehlor supplies	445 97
P. Lehman, as per Exhibit B annexed & made part hereof, sold & delivered to st'r Katie P. Kountz supplies, stores, &c.	35 08
John W. Davitt, as per Exhibit "C" annexed & made part hereof, sold & delivered to st'r J. B. Kehlor materials, &c.	24 37
Jno. W. Davitt, as per Exhibit "D" annexed and made part hereof, sold & delivered to st'r Katie P. Kountz materials, &c.	10 10
Henry C. Hollman & Co., as per Exhibit "E" annexed and made part hereof, sold & delivered to st'r J. B. M. Kehlor supplies [and] stores	19 75
Barnard Coal & Transp. Co., as per Exhibit "F" annexed and made part hereof, sold & delivered to st'r J. B. M. Kehlor coal & supplies	90

That said bills are true and correct and the prices charged for said goods, &c., were the market prices thereof and are just, and said bills are past due and unpaid.

4th. That said goods and materials were sold and delivered solely upon the credit of said st'boats and could only have been procured upon the credit of said boats and that they have an admiralty lien and a State lien on said boats for the payment of said claims.

6th. That all and singular the premises are true and within the jurisdiction of this hon. court.

Wherefore intervening libellants pray leave to intervene herein and pray that their respective claims and demands as aforesaid may be allowed and decreed to be paid to them out of the proceeds of

the sale of said boats and for recognition of their aforesaid liens and for such other relief and redress as to law and justice they may be entitled to receive.

(Signed) B. F. CHOATE,
Proctor for Intervening Libell'ts.

Benj. F. Choate, being duly sworn, says that he is the proctor for intervening libellants herein, and all said intervening libel-
116 lants resides out of the State of La., and that all and singular the facts and allegations contained in the foregoing intervening libel are true and correct to the best of his knowledge and belief.

(Signed) B. F. CHOATE.

Sworn to and subscribed before me Jan'y 10th, 1882.
(Signed) K. LOEW,
U. S. Com'r.

Let this libel of intervention be filed Jan'y 10th, 1882.
(Signed) EDWARD C. BILLINGS, *Judge.*

EXHIBIT "F," Annex to Intervention.

CHESTER ILL., *December* 21st, 1880.

Received of Barnard Coal & Transportation Co., for use of steamer J. B. M. Kehlor and owners, 48 tons lump coal, at $1.87\frac{1}{2}$ per ton, $90.00.

Amount due Barnard Coal and Transportation Co.
(Signed) WILLIAM C. KIMBER, *Clerk.*

Intervention of Jacob Walter. Filed 19th Jan'y, 1882.

CITIZENS' INS. CO.
vs.
KOUNTZ LINE. } 11712.

Jacob Walter, residing in the city of Cairo, southern district of Illinois, exhibits this his intervening libel against the st'b't J. B. M. Kehlor, her boats, tackle, apparel, furniture, and the proceeds thereof in the registry or which may come into the registry
117 of this court, said vessel now lying in the port of New Orleans, and being in the custody of the marshal of this district by virtue of an admiralty warrant in this court and against all persons intervening herein in a cause of contract, civil and maritime; and thereupon intervenor doth allege as follows:

1st. That during the month of Feb'y, about 17 day, 1881, your intervenor did furnish 700 pounds of meat, at 7 cts. per pound, and 25 pounds of sausage, at 7 cts. per pound, to said vessel, all at the request of the master, which were proper and necessary supplies, for use as a common carrier, for which there is due & owing the amount of $50.75, as will more fully appear by reference to the detailed annexed schedule sworn to by intervenor, for the payment of which

he has a special privilege on said vessel, &c., according to the laws of said State, and that said vessel and owner are likewise liable *in solido* to your intervenor for the above amount.

2nd. That said st'b't belongs to the port of St. Louis, and is within the civil and admiralty jurisdiction of this hon. court.

3rd. That all and singular the premises are true.

Wherefore intervening libellant- pray that process in due form of law may issue herein according to the courts of admiralty,
118 and that, after due proceedings had, this hon. court will pronounce for the intervening libellants aforesaid — demand and decree the same to be paid with costs by the said vessel, her boats, tackle, apparel, & furniture, and out of the proceedings when sold, and for such other and further relief and redress as to right and justice may appertain and the court is competent to give in the premises.

(Signed) J. M. HARDING, *Proctor.*

James M. Harding, being duly sworn, says that he is the proctor for libellant intervening in the foregoing libel, and that said inter-ven*ing* is absent from the State of La. and non-resident, and that he is authorized to act for said intervening libellant as his attorney, and that all and singular the allegations and statements in the foregoing libel are true and correct to the best of his knowledge and belief.

(Signed) J. M. HARDING.

Sworn to and subscribed before me this 19th day of Jan'y, 1882.

(Signed) K. LOEW,
U. S. Com'r.

Let this intervention be filed.

Jan'y 19th, 1882.

(Signed) EDWARD C. BILLINGS, *Judge.*

119 *Intervention of G. D. Williamson & Co. Filed 19th Jan'y, '82.*

CITIZENS' INS. CO.
vs.
KOUNTZ LINE. } 11712.

G. D. Williamson & Co., a commercial firm composed of G. D. Williamson & W. W. Wright, domiciled in Cairo, Ill., exhibit this their intervening libel ag'st the st'b't J. B. M. Kehlor, her boats, tackle, apparel, furniture, &c., and the proceeds thereof, in the registry or which may come into the registry of this court, said vessel now laying in the port of New Orleans and being in the custody of the marshal of this district by virtue of an admiralty warrant in this cause, and ag'st all persons intervening herein, in a cause of contract, civil and maritime; and thereupon intervenor doth allege as follows:

1st. That during the month of Feb'y, 1881, about the 17th day of said month, your intervenor did furnish certain articles of merchandize, stores, and supplies to said vessel, all at the request of the master, as will more fully appear from a sworn statement of said arti-

cles and their prices, hereto annexed, marked Exhibit "A," and made a part hereof, all of which were proper and necessary supplies for her as a common carrier, for which there is due and owing the amount of $133.43, and remains unpaid, for the payment of
120 which he has a special privilege on said vessel according to the laws of said State, and that said vessel and owners are liable *in solido* to your intervenor for the above amount.

2nd. That said steamboat belongs to the port of St. Louis and is within the civil & admiralty jurisdiction of this hon. court.

3rd. That all and singular the premises are true.

Wherefore intervening libellant prays that process in due form of law issue herein according to the courts of admiralty, and that, after due proceedings had, this hon. court will pronounce for the intervening libell'ts' aforesaid demand, and decree the same to be paid, with costs, by the said vessel, her boats, tackle, apparel, and furniture, and out of the proceeds of the sale of same, and for such other and further relief and redress as to rights and justice may appertain and the court is competent to give in the premises.

(Signed) J. M. HARDING, *Proctor.*

James M. Harding, being duly sworn, says that he is the proctor for the intervening libellant in the foregoing libel; that said intervening libellant is absent from the State of La. and is a non-resident, and that deponent is authorized to act for said inter-
121 vening libellant as his att'y, and that all & singular the allegations and statements in the foregoing libel are true and correct to the best of his knowledge and belief.

(Signed) J. M. HARDING.

Sworn to and subscribed before me this 19th day of Jan'y, '82.

(Signed) K. LOEW, *U. S. C.*

Let this intervention be filed.

Jan'y 19th, '82.

(Signed) EDW. C. BILLINGS, *Judge.*

Appeal of W. G. Wilmot & Co. April 6th, 1882.

CITIZENS' INS. CO. *vs.* KOUNTZ LINE & *al.* } 11712.

The intervenors herein, Wilmot & Co., pray for an appeal from the decree of this hon. court in the above-entitled cause to the next circuit court of the U. S. to be held in this district at the time appointed by law, upon giving bond and security in the sum of $50.

(Signed) H. H. WALSH,
Proctor for Intervenors.

Let the appeal prayed for be granted, to be returnable to the next circuit court to be held in this city at the time appointed by law, the appell'ts giving bond & security in the sum of $50.

April 6th, 1882.

(Signed) EDW. C. BILLINGS, *Judge.*

122 *Appeal of Barnard Coal & Transportation Company. Filed April 11th, 1882.*

CITIZENS' INS. Co. & *al*
vs.
KOUNTZ LINE & *al.* } 11712.

Now come Barnard Coal & Transportation Co., intervenors in the above-entitled suit, and ask this hon. court for an appeal from the decree herein rendered on the 3rd April, 1882, dismissing said intervention without prejudice, to the next circuit court of the U. S. to be held in this district at the time appointed by law, and that they be dispensed from giving bond & security, as agreed by pl'ffs & def'ts as per annexed agreement, made part hereof, and that they pray for all necessary redress according to law, and for general relief.

(Signed) B. F. CHOATS,
Proctor for Intervenor.

Let the appeal be granted, returnable as prayed for.
April 11th, 1882.
(Signed) EDWARD C. BILLINGS, *Judge.*

Appeal of Jacob Walter & G. D. Williamson & Co. Filed April 12th, 1882.

CITIZENS' INS. Co.
vs.
KOUNTZ LINE & *al.* } 11712.

123 Now come Jacob Walter and G. D. Williamson & Co., intervenors in the above-entitled suit, and ask this hon. court for an appeal from the decree herein rendered on the 3d of April, 1882, dismissing said interventions without prejudice to the next circuit court of the U. S., to be held in this district at the time appointed by law, and that they and each of them be dispensed from giving bond and security for costs, as agreed by pl'ffs and def'ts herein, as per annexed agreement, made part hereof, and they pray for gen. relief.

(Signed) J. M. HARDING,
Proctors for said Intervenors.

Appeal Bond of W. G. Wilmot & Co.

Eastern District of Louisiana, District Court of the United States.
In Admiralty.

CITIZENS' INS. Co. & *al.*
vs.
KOUNTZ LINE & *al.* } No. 11712.

UNITED STATES OF AMERICA:

Know all men by these presents that we, the commercial firm of W. G. Wilmot & Co., as principal, and George H. Kirk, as surety,

are held and firmly bound unto the Kountz Line & *al.* in the sum of fifty dollars, to be paid to the said Kountz Line & *al.*; for
124 the payment of which, well and truly to be made, in lawful money of the United States, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Seal- with our seal and dated at New Orleans the 8th day of April, 1882.

Whereas the above-named W. G. Wilmot & Co. have appealed to the next term of the circuit court for the 5th circuit and eastern district of Louisiana from a final judgment of the district court of the United States for said district rendered against them on the 3rd day of April, 1882, and signed on the — day of April, 188–, in the above-entitled cause:

Now, therefore, the condition of this obligation is such that if the above-named appellant- shall prosecute their appeal to effect and answer all *all* damages and costs and satisfy whatever judgment may be rendered against them if they fail to make their appeal good, then this obligation to be void; otherwise, the same shall be and remain in full force and effect.

W. G. WILMOT & CO.
GEO. H. KIRK.

Signed, sealed, and delivered in the presence of—
J. DEVONSHIRE,
U. S. Com'r.

Order Extending Time to File Transcript.

Extracts from the minutes.

APRIL 24, '82.

125 And now comes Jno. Devonshire, clerk of the district court of the U. S. for this district, suggesting that the appeals in this cause are made returnable this day, but that the record is so voluminous that, notwithstanding all due diligence, he has been unable to complete the transcript, which will consist of several thousand pages, he now files in court all that has thus far been transcribed and asks for an extension of time to complete the same; whereupon it is ordered that the return day of all appeals in this cause be extended to the 4th Monday of May next.

Rule by Intervening Libellants for a Decree.

On motion of B. F. Chute, H. H. Walsh, and J. M. Harding, proctors for P. Lehman; W. G. Wilmot & Co., G. D. Williamson & Co., and others, intervening libellants herein, it is ordered that libellants and defendants herein, through their proctors, show cause on Saturday, the 10th day of June, 1882, at 11 o'clock a. m., why a decree should not be entered herein in favor of intervenors allowing their respective claims as prayed for, and for an order decreeing the same to be paid out of the funds in the registry of court.—Extracts from minutes June 3, '82.

Order to Fix Cause for Trial.

Extract from the minutes, Dec. 11, '82.

On motion of H. H. Walsh, proctor for intervenors, Wm.
126 G. Wilmot & Co., and Lagan & Mackison, it is ordered that the above cause be fixed for trial on the 15- instant at 11 a. m., and that appellants and appellees have due notice hereof.

Hearing.

DEC'BER 15TH, 1882.

This cause assigned for hearing this day upon the request of H. H. Walsh, Esq., proctor for W. G. Wilmot & Co., intervenors, was called for trial.

Present: O. B. Sansum, Esq., for libellants; B. F. Choate, Esq., for certain intervenors; H. H. Walsh, Esq., for W. G. Wilmot & Co., intervenors, absent.

Whereupon it was ordered that the cause be continued, to be re-assigned.

Order Fixing Hearing.

CITIZENS' INSURANCE COMPANY *et al. vs.* KOUNTZ LINE *et als.*

MAY 17TH, 1883.

Ordered that this cause be fixed for hearing on Monday, May 28th, 1883, and that all parties in interest be notified hereof.

Continuance.

CITIZENS' INSURANCE CO. *vs.* KOUNTZ LINE & *al.*

MAY 28TH, 1883.

For want of time this cause is continued until to-morrow at 11 o'clock a. m.

Hearing.

MAY 29TH, 1883.

127 This cause came on to be heard on the transcript of the record from the district court of the United States for the eastern district of Louisiana, and was argued by O. B. Sansum on the part of the libellants, and was continued until to-morrow at 12 o'clock m.

CITIZENS' INSURANCE CO. *vs.* KOUNTZ LINE *et als.*

MAY 30TH, 1883.

This cause, as continued from yesterday, came on to be further heard, and was argued further until four o'clock p. m., when it was ordered by the court that the cause be continued until to-morrow morning at eleven o'clock.

MAY 31ST, 1883.

This cause, as continued from yesterday, came on again this day to be further heard, and was argued by the counsel for the libellants and claimants until 3 p. m., when it was again continued for further hearing until to-morrow at 11 a. m.

CITIZENS' INSURANCE CO. *vs.* KOUNTZ LINE *et als.*

JUNE 1ST, 1883.

This cause, as continued from yesterday, came on this day to be further heard, and was argued further and submitted, and the court took time to consider.

The Finding and Decree.

JUNE 4TH, 1883.

128 This cause came on to be heard upon the transcript of the record of the pleadings, evidence, proceedings, and decree of the district court, and was argued by counsel of the respective parties.

On consideration whereof, the court being fully advised in the premises, finds the following facts:

1st. On June 24th, 1872, William J. Kountz, Charles Scudder, and John W. King, William W. W. Atex, and Charles H. Seaman filed a declaration in the office of the secretary of the State of Missouri whereby, under the law- of the State of Missouri, a corporate body was organized, under the name of the Kountz line, with a capital stock of $15,000, divided into 150 shares of $100 each, the object of whose organization *were* declared to be to build or purchase, use, and employ one or more wharf-boats for the use and convenience of steamboats and other vessels belonging to the stockholders of said company, &c.; also to build, purchase, or charter steamboats, towboats, &c., for transportation of freight and passengers on the Mississippi river and its tributaries, &c., and to do a general river business. The corporators above named were to be, and were, the directors of said company for the first year, and William J. Kountz and John W. King, respondents in this case, were elected president and general agent, respectively, of said corporation.

129 2nd. On November 13th, 1872, said Kountz, King, and one E. A. Sheble organized under the laws of Missouri another body corporate*d*, by the name of the C. V. Kountz Transportation Company, for carrying freight and passengers as common carriers on the Mississippi river and its tributaries, with a capital stock of 400 shares of $50 each. On the same day the same persons, in like manner and for the same purpose, organized another corporate body under the name of K. P. Kountz Transportation Company, with 300 shares of capital stock of $50 per share. On the same day the same persons, in like manner and for the same purpose, organized under the laws of Missouri another corporate body under the name of the H. C. Yeager Transportation Company, with a capital stock of 400 shares of $50 per share. On the same day the same persons, in like

manner and for the same purpose, organized under the laws of Missouri still another corporate body under the name of the M. Moore Transportation Company; that said Kountz and King were chosen directors in all of said four transportation company mentioned in this finding, and said King treasurer and secretary of each.

3rd. That said Kountz, King, and Sheble, Charles H. Seaman, Hiram K. Haslitt, and W. P. Braithwaithe, having interests as
130 owners, respectively, in the steamboats Carrie V. Kountz, Katie P. Kountz, Henry C. Yeager, and Mollie Moore, conveyed the same by bills of sale as follows: The Carrie V. Kountz to the Carrie V. Kountz Transportation Company; the Henry C. Yeager to the H. C. Yeager Transportation Company; the Katie P. Kountz to the K. P. Kountz Transportation Company, and the Mollie Moore to the M. Moore Transportation Company, and received in consideration of said transfer stock in said transportation companies, respectively.

Afterwards, on September 14, 1878, the steamboat J. B. M. Kehlor was conveyed to the said M. Moore Transportation Company. William J. Kountz never at any time owned more than two shares of stock in the Kountz line. On January 15th, 1873, he owned 398 shares in the M. Moore Transportation Company and King and Shible each one. On December 19, 1879, the stock of said last-named company was held as follows: By Katie P. Kountz, daughter of said William J. Kountz, 397 shares, and one share each by Thomas Rogers, John W. King, and W. J. Kountz. On November 4th, 1878, the stock of the K. P. Kountz Transportation Company was held as follows: By said Katie P. Kountz, 241¾ shares; by John W. King, one share; by W. J. Kountz, one share, and by said Braithwaite, 56¼ shares. On May 21, 1880, the stock of the C. V. Kountz
131 Transportation Company was held as follows: By Katie P. Kountz, 323 shares; by Clement Seaman, 74 shares, and by said King, C. H. Seaman, and W. J. Kountz, one share each; that on December 19, 1879, the stock of the H. C. Yeager Transportation Company was held as follows: By Katie P. Kountz, 379 shares; by said King, Thomas Rogers, and W. J. Kountz, each one share. No subsequent transfer of stock were made in any of said companies.

4th. That the said steamboats mentioned in the preceeding finding were employed and used by the respective transportation companies, to which they were conveyed, under the direction of the officers of said companies, in carrying freight and passengers on the Mississippi river and its tributaries, and the said corporation, the Kountz Line, was the common agent of all said other transportation companies.

5th. That the said Kountz line was not, on May 21, 1880, nor during the year 1880, the owner of any steamboat nor other water craft, except a wharf-boat, moored to the bank of the Mississippi river, in the city of St. Louis, Missouri.

6th. That the said corporations—The Kountz Line, The C. V. Kountz Transportation Company, The K. P. Kountz Transportation Company, The H. C. Yeager Transportation Company, and
132 The M. Moore Transportation Company—owned no property

in common. The Kountz line charged said other companies mentioned in this finding respectively, for the services rendered to them respectively, from $100 to $150.00 per trip. It collected the dues of all said other companies, and kept a separate account with each of said companies, and paid to each company its own earnings. There was no community of profits or property between said companies, including the Kountz line or any two or more of them. All said companies, including the Kountz line, had their business offices in the same room, on the wharf-boat of the Kountz line, at the foot of Myrtle street, in the city of St. Louis. The Kountz line, by means of advertisements in newspapers, placards, handbills, and cards, advertised the Kountz line, set forth the advantages offered by the boats of that line, their low rates of freight, &c., and announced that it was ready to contract for the carrying of goods and produce by the Kountz line boats.

Usually only one, but sometimes two or more, of the boats belonging to said transportation companies were mentioned in said advertisements, placards, and handbills as belonging to said
133 Kountz line.

It made out bills of freight upon blanks headed "Kountz Line, St. Louis and New Orleans Packet," but the bills were in the name of the particular steamboat to which the freight was due. The dray tickets of shippers indicated upon what boat these goods were to be shipped on.

Bills of lading for the goods shipped on the steamboats belonging to said transportation companies were usually signed "John W. King, ag't Kountz line, St. Louis," such signature being made by a stamp, but the bills of lading were sometimes signed by the clerk of the steamboat on which the goods were shipped.

The said Kountz line sometimes purchased produce and merchandize for the purpose of its being shipped upon the steamboats belonging to said transportation companies in order to enable said boats to have freight, but the sum paid for such produce and merchandize so purchased was always charged by the Kountz line to the transportation company in whose interest it was purchased; that none of said steamboats were ever advertised by the name of any of the corporation- that owned them, and that goods purchased by the said Kountz line to make freight for said boat *was*
134 usually bought and paid for by the Kountz line, and that drafts were drawn against said shipments on the consignees by said Kountz line in the name — Kountz line, and all moneys, whether received for freight carried by said several steamboats or for goods shipped and sold for their account, *was* remitted to said Wm. J. Kountz or John W. King as the agents of said Kountz line, and was deposited in bank at St. Louis to the credit of said Kountz line, and that the costs of the goods were charged to the individual boat on which they were shipped, and after deducting costs and charges the net proceeds, though deposited in bank to the credit of the Kountz line, were placed in the books of account to the credit of the boat carrying the goods, and were her separate profits.

7th. On and prior to May 21, 1880, W. J. Kountz was a stockholder in all of said companies, but the stock in no two of said companies was held by the same persons.

On and about May 21, 1880, certain produce and merchandize described in Exhibit "A," attached to the libel, and of the value of $31,720, were shipped at St. Louis and at East Kinswick on board the steamboat Henry C. Yeager, then owned by the H. C. Yeager Transportation Company, for transportation to the city of New Orleans and other port- on the Mississippi river.

135 Some of the bills of lading given for said produce and merchandize recited that the same were received from John W. King on board the steamer Henry C. Yeager, to be delivered to the consignee at New Orleans. In witness whereof the master, clerk, or agent of said boat had affirmed to three bills of lading, &c., and were signed, some of them, John W. King, ag't, Kountz line, St. Louis, and some by E. B. McPherson, clerk

Others of said bills of lading recited the shipping of produce by other shippers on board the Henry C. Yeager and were signed by King in the manner aforesaid, and others by E. B. McPherson, clerk.

That from the date said H. C. Yeager Transportation Company, said C. V. Kountz Transportation Company, said K. P. Kountz Transportation Company, and said Mollie Moore Transportation Company were incorporated to the date said shipments were made on said steamboat Henry C. Yeager none of said transportation companies ever transacted any commercial business by their several and respective names, but the same was done by the name of the Kountz line, or in the name of the individual boats belonging to said transportation companies.

8th. The steamboat Henry C. Yeager left the city of St. Louis on May 21, 1880, at 4 o'clock in the morning, having said goods

136 and produce on board. The weather was clear and fine and the water smooth, and so continued until after the disaster hereafter mentioned. On May 22d, about 2 o'clock p. m., a bolt in the stuffing-box of one of the piston rods of the engine of the Yeager broke, and for the purpose of repairing it the Yeager was landed at a point called Big Eddy, on the Missouri bank of the river. She made an easy landing and was secured to the bank by a line from her bow with her stern up-stream. She remained there from an hour to an hour and a half, until her machinery was repaired. During this period she was leaking and making water, and at its expiration she had listed to her starboard, and her starboard side was from 6 to 18 inches lower than her larboard side, and there was from two to three feet [of] water in her hold on the starboard side.

When her officers and crew undertook to take her out and away from the bank they were not able to do so. She was aground on her larboard side and could be moved only a few feet forward or backward. The Lioness, a steam-tug which about this time came in sight, at the request of the master of the Yeager, made fast to her and pulled her out directly from the shore into the river. The Lioness then cut loose from the Yeager and proceeded

137 down the river. It was then discovered that the Yeager was filling rapidly with water. By the order of her master she was run upon a bar about 80 yards distant, when, within eight or ten minutes after the Lioness had left her, she sank in about thirty feet of water and became a total loss. A part of the cargo of the Yeager, of the value of thirty-one thousand seven hundred and twenty dollars and forty-one cents, was lost by reason of the sinking and loss of the said steamboat Yeager, being the same property mentioned in Exhibit "A" to the libel. The libellants were the insurers, respectively, of the said cargo so lost for the sums stated in Exhibit "B," attached to the libel, and have paid to the owners of said cargo, respectively, said insurance money, as set out in said exhibit, and had been subrogated to all the rights and claims which the owners of said cargo had, respectively, against the respondents for said loss and damage.

9th. Said steamboat Henry C. Yeager, when she commence- her said voyage on May 21, 1880, was unseaworthy and so continued until her sinking and loss as aforesaid on May 22, 1880, and the said sinking and loss of the said steamboat Henry C. Yeager and said loss and damage to her cargo as aforesaid were caused by

138 and *was* the direct consequence of said unseaworthiness.

10th. That the said steamboat J. B. M. Kehlor, long prior to May 21, 1880, was, and ever since has been, and when seized upon the writ of attachment issued in this case was, the property of the said Mollie Moore Transportation Company, and that the said steamboat Katie P. Kountz, long prior to May 21st, 1880, was, and ever since has been, and when seized upon the writ of attachment issued in this case was, the propery of the said K. P. Kountz Transportation Company.

11th. That the following claims of intervening libellants against the said steamboat J. B. M. Kehlor are just and due and owing to said intervening libellants, respectively, and are liens upon said steamboat and bear interest from judicial demand, respectively:

Jacob Walter	$850 75
G. D. Williamson & Co.	133 43
W. G. Wilmot & Co.	1,312 50
The Bernard Coal & Transportation Co.	90 00

That the following claim of intervening libellants, W. G. Wilmot & Co. against said steamboat Katie V. Kountz is just and due and owing to said intervening libellants, and is a lien upon said steamboat, with interest from judicial demand:

W. G. Wilmot & Co.	$475 00

139 The claims of all other intervening libellants are either stale or not sufficient in amount to give this court jurisdiction in or are unsupported by proof.

As conclusion of law from the facts so found as aforesaid the court is of opinion and finds as follows:

1st. That there was no joint liability of the respondents, or any of them, for the said loss of said cargo shipped as aforesaid upon the steamboat Henry C. Yeager or any part thereof, but that the said steamboat Henry C. Yeager and owner, the H. C. Yeager Transportation Company, was alone liable.

2nd. That the attachments issued at the instance of said libellants, and under which the said steamboats J. B. M. Kehlor and Katie V. Kountz have been seized, should be released and discharged, and that the original libel should be dismissed at the costs of the original libellants.

3rd. That the claims of said intervening libellants against the said J. B. M. Kehlor should be paid *pro rata* out of the proceeds of her sale after the costs and expenses of her seizure, detention, and sale, and her costs of suit in the district court and circuit court have been satisfied; but [as] it appears from the record that the proceeds of the sale of the said steamboat Katie V. Kountz have been
140 already exhausted in the payment of the costs and expenses of her seizure, detention and sale, no decree can be rendered for the payment out of the funds in the registry of the court of the amount due said W. G. Wilmot & Co. against the Katie V. Kountz Transportation Company.

It is therefore ordered, adjudged, and decreed that said original libel filed by the Citizens' Insurance Company of Missouri and others, original libellants, be, and the same is hereby, dismissed at their costs, and that said M. Moore Transportation Company and the said K. P. Kountz Transportation Company do respectively recover from said original libellants, the first-named transportation company, the cost and expenses of the seizure, detention, and sale of the said steamboat J. B. M. Kehlor, and [from] the second-named transportation company the costs and expenses of the seizure, detention, and sale of the said steamboat Katie P. Kountz, so far as the same have been paid respectively out of the proceeds of the sale of said steamboats.

That said intervening libellants, setting up claims against the said steamboat J. B. M. Kehlor, do have and recover against the said M. Moore Transportation Company the amount of their claims, respectively, with interest from judicial demand as follows:

141 Jacob Walter	$850 75
G. D. Williamson & Co.	133 45
W. G. Wilmot & Co.	1,312 50
The Bernard Coal & Transportation Co.	90 00

And their costs of suit, and that the same be paid out of the moneys remaining in registry of the court from the proceeds of the sale of said steamboat J. B. M. Kehlor, after paying the costs and expenses of her seizure, detention, and sale.

That said intervening libellants, W. G. Wilmot & Co., do have and recover against the said K. P. Kountz Transportation Company the amount of their claim against the said Katie P. Kountz, namely, $475, with interest from judicial demand, and their costs of suit in prosecuting said claim.

It is further ordered, adjudged, and decreed that after the payment of said claims of intervening libellants against the said steamboat J. B. M. Kehlor, and the costs adjudged against the M. Moore Transportation Company, the residue of the fund in the registry of the court, the proceeds of the said steamboat J. B. M. Kehlor, be paid to said M. Moore Transportation Company.

Motion and Order for Appeal.

JUNE 6TH, '83.

142 The above-named libellants, by their proctor, O. B. Sansum, now at this time comes into court here and prays an appeal from the judgment entered in said cause dismissing said libel, and they also pray an appeal from the judgment rendered in favor of the said intervenors, to wit, Jacob Walter, G. D. Williamson & Co., W. G. Wilmot & Co., the Bernard Coal and Transportation Company, and that the same operate as a supersedeas in said cause upon all said judgments.

Whereupon it was ordered by the court that an appeal, to operate as a supersedeas, be granted herein, returnable to the Supreme Court of the United States on the second Monday of October next ensuing, upon the said libellants furnishing bond with good and solvent surety in the sum of one thousand dollars conditioned as the law directs.

Amendment to Final Decree.

JUNE 22ND, 1883.

This day, on motion of counsel for the respondents, the M. Moore Transportation Company and the K. P. Kountz Transportation Company, and on due consideration by the court, it is ordered that the final decree rendered in this cause at the present term be amended as follows:

143 First. Strike out of said decree the following words: "And that the said M. Moore Transportation Company and the K. P. Kountz Transportation Company do respectively recover from said original libellants, the first-named transportation company, the costs and expenses of the seizure and detention and sale of the said steamboat K. P. Kountz, so far as the same have been paid, respectively, out of the proceeds of the sale of said steamboats."

Second. In the place and stead of the words as stricken out of said decree insert the following words: "And that the said M Moore Transportation Company do receive from said original libellants for the costs and expenses of the seizure, detention, and sale of the said steamboat J. B. M. Kehlor a sum equal to the amount applied to the payment of said costs and expenses from the proceeds of the sale of said steamboat, and that the said K. P. Kountz Transportation Company in like manner recover from said original libellants for the costs and expenses of the seizure, detention, and sale of the said steamboat Katie P. Kountz a sum equal to the amount applied

to the payment of said costs and expenses from the proceeds of the sale of said steamboat.

144 (Signed) W. B. WOODS,
Circuit Justice.

(Signed) DON A. PARDEE,
Circuit Judge.

The following order and finding was this day received from his hon. the circuit justice, viz:

Filing Additional Facts.

THE CITIZENS' INSURANCE COMPANY *et als.*
vs.
THE KOUNTZ LINE *et als.*

JULY 5TH, 1883.

On motion of counsel for the libellants and upon consideration of the evidence the following additional facts are found by the court, and it is ordered that the same be inserted in the record as an additional finding of facts, as follows, to wit:

On July 6th, 1874, six shares of the capitol stock of the Kountz line were owned by five persons, namely, William J. Kountz, two shares, and by said King, D. C. Brady, Van Hook, and C. H. Seaman each one share, and the residue of said capitol stock, namely, 144 shares, was owned by the following-named steamboats, each holding thirty-six shares, namely: the John F. Tolle, the Henry C. Yeager, the Mollie Moore, and the Carrie V. Kountz; that

145 the said shares so owned by said steamboats were held by them, respectively, at the commencement of this suit, except the thirty-six shares owned by the steamboat John F. Tolle, which were transferred to the steamboat J. B. M. Kehlor when she was conveyed to the M. Moore Transportation Company, and they remained in her name at the commencement of this suit.

June 28th, 1883.

(Signed) W. B. WOODS,
Circuit Justice.

Bond for Appeal. Filed July 17th, 1883.

UNITED STATES OF AMERICA:

Know all men by these presents that we, The Sun Mutual Insurance Company of New Orleans and Hibernia Insurance Company, of the same place, as principals, and John Henderson, of the same place, as surety, are held and firmly bound, jointly and severally, unto the Kountz Line, the H. C. Yeager Transportation Company, the M. Moore Transportation Co., the K. P. Kountz Transportation Co., and the C. V. Kountz Transportation Co., and William J. Kountz and John W. King in the sum of one thousand dollars, lawful

146 money of the United States of America, to be paid to the said Kountz Line, H. C. Yeager Transportation Co., M. Moore Transportation Co., K. P. Kountz Transportation Co., C. V. Kountz

Transportation Co., William J. Kountz and John W. King, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the tenth day of June, in the year of our Lord eighteen hundred and eighty-three.

Whereas the said principal above named having heretofore, to wit, on the 6th day of June, 1883, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the fourth day of June, 1883, by the circuit court of the United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana, in the suit of the Citizens' Insurance Company and others:

Now, the condition of the above obligation is that if the above-bounden Sun Mutual Insurance Company and Hibernia Insurance Company shall prosecute their said appeal to effect and shall
147 answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

SUN MUT. INS. CO.,
Per JAMES I. DAY, *Pres't.*
THE HIBERNIA INS. CO.,
By JOHN HENDERSON, *Pres't.*
(Signed) JOHN HENDERSON.

Signed, sealed, & delivered in the presents of—
O. B. SANSUM.

Bond approved.
July 11th, 1883.
(Signed) EDW. C. BILLINGS, *Judge.*

148 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 147 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had in the case of the Citizens' Insurance Company of Missouri, the Northwestern National Insurance Company of Milwaukee, the Orient Mutual Company of New York, the Washington Fire and Marine Insurance Company of Boston, the Sun Mutual Insurance Company of New Orleans, the Rheinish Westphalian Lloyd of Gladback, [and] the Hibernia Insurance Company of New Orleans, *are* libellants, *vs.* the Kountz Line, the H. C. Yeager Transportation Company, the C. V. Kountz Transportation Company, the K. P. Kountz Transportation

Company, the M. Moore Transportation Company, William J. Kountz, and John W. King, respondents.

No. 9953 of the docket of the said court.

Witness my hand and the seal of said court at the city of New Orleans this 7th day of August, A. D. 1883.

[Seal of U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

F. A. WOOLFLEY, *Clerk.*

149 I, Don A. Pardee, United States circuit judge for the eastern district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 7th day of August, A. D. 1883.

Three words interlined.

Approved. DON A. PARDEE.

150 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to the Kountz Line, the H. C. Yeager Transportation Company, the C. V. Kountz Transportation Company, the K. P. Kountz Transportation Company, the M. Moore Transportation Company, William J. Kountz, and John W. King, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a motion and order for an appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein the Sun Mutual Insurance Company of New Orleans and the Hibernia Insurance Company of New Orleans are appellants in the case of the Citizens' Insurance Company *vs.* Kountz Line *et al.*, No. 9953 of the docket of said circuit court, and you, and each of you, are appellants in said case, to show cause, if any there be, why the judgment rendered against the said appellants, as in said motion and order for an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 17th day of July, in the year of our Lord one thousand eight hundred and eighty-three.

DON A. PARDEE, *Judge.*

151 [Endorsed:] Serve on Singleton & Browne, proctors. United States circuit court. No. 9953. Citizens' Insurance Co. *et als.*, Sun Mutual Insurance Co. *et als.*, appellants, *vs.* Kountz Line *et als.*, appellees. Citation to appellees.

Marshal's Return.

Received, Jul. 18, 1883, by the U. S. marshal, and on July 18th, 1883, I served a true duplicate of this the original citation of *of* appeal on the appellees herein named, to wit, the Kountz Line, the H. C. Yeager Transportation Company, the C. V. Kountz Transportation Company, the K. P. Kountz Transportation Company, the M. Moore Transportation Company, William J. Kountz, and John W. King, by handing the same to R. H. Browne, Esq., of the law firm of Singleton, Brown & Choat, proctors for the aforesaid appellees, in person, in the city of New Orleans.

J. R. G. PITKIN,
U. S. Marshal, Eastern Dist. of La.,
By E. S. CURRY,
D'y U. S. Marshal.

Personally appeared before me E. S. Curry, a lawful deputy of J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and makes oath that he served a true duplicate of this the original citation of appeal on the appellees herein named, as set forth in his official return herein.

E. S. CURRY,
D'y U. S. Marshal.

Subscribed and sworn before me July 18th, 1883.

F. A. WOOLFLEY,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

Endorsed on cover: E. Louisiana C. C. U. S. No. 136. The Sun Mutual Insurance Company of New Orleans and the Hibernia Insurance Company of New Orleans, appellants, *vs.* The Kountz Line, the H. C. Yeager Transportation Company, the C. V. Kountz Transportation Company, the K. P. Kountz Transportation Company, the M. Moore Transportation Company, William J. Kountz, and John W. King. Filed 11th October, 1883.

122-588

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1886.

No. 136.

THE SUN MUTUAL INSURANCE COMPANY
ET AL., APPELLANTS,

versus

THE KOUNTZ LINE ET AL., RESPONDENTS.

BRIEF AND ARGUMENT FOR APPELLANTS.

O. B. SANSUM.
For Appellants.

T. H. Thomason, Printer, No. 36 Natchez Street, N. O.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1886.

No. 136.

THE SUN MUTUAL INSURANCE COMPANY
ET AL., APPELLANTS,

versus

THE KOUNTZ LINE ET AL., RESPONDENTS.

BRIEF AND ARGUMENT FOR APPELLANTS.

Appellants instituted this suit in the District Court of the United States, for the Eastern District of Louisiana, in Admiralty, *in personam*, against five transportation companies, namely: the Kountz Line, the H. C. Yeager Transportation Co., the K. P. Kountz Transportation Co., the C. V. Kountz Transportation Co., and the M. Moore Transportation Co.,—to recover $31,720.41, the value of certain goods lost May 22d, 1880, by the sinking of the steamboat Henry C. Yeager, at Big Eddy, eighty miles below St. Louis, in the Mississippi River.

In the sixth article of the libel it is alleged that all

these transportation companies united in the joint enterprise of carrying freight and passengers, as common carriers, on the Mississippi River and the waters tributary thereto, by the name, the Kountz Line, and by that name, all the transportation companies named, appointed John W. King their general agent, and occupied one general place of business in the City of St. Louis, and by that name they have always, ever since, carried on the said joint business of carrying freight and passengers as common carriers, making all their contracts of affreightment with all persons shipping goods or merchandise by said Kountz Line, and by that name they have always, ever since, held out to the world all the aforesaid steamboats as the steamboats of the said Kountz Line.

The libellants averred in their libel that on June 24th, 1872, W. J. Kountz and J. W. King, and three other persons (whose names were not stated because they had never participated in the business), by a declaration recorded under the statutes of Missouri, declared themselves a corporation by the name of the Kountz Line, for carrying freight and passengers, fixing their place of business at St. Louis, and their capital stock at 150 shares of 100 dollars each share. That Kountz and King became the only agents of said Kountz Line—said Kountz being the President, and said King being the General Agent thereof;—both Kountz and King being the directors of that Company. (*Printed Transcript*, pp. 1 and 2).

The foregoing allegations are supported by the first finding of facts. (*Printed Transcript*, p. 59).

Again, the libel alleges that said Kountz and King, and one J. A. Sheble, being the real and substantial owners of several steamboats, namely: the Carrie V. Kountz, the Katy P. Kountz, the Henry C. Yeager and the Mollie Moore, surrendered the management and control of them all to the said Kountz to carry on for them the business of common carriers, by the name, the Kountz Line, at St. Louis. That said Kountz had sole control of them, and that King became the agent thereof; and that on November 13th, 1872, the same persons, Kountz, King and Sheble, made another declaration in writing, which they recorded in the office of the Recorder of Deeds, at St. Louis, by which they declared themselves another body corporate, by the name, the C. V. Kountz Transportation Co., for carrying freight and passengers as common carriers, fixing their place of business at St. Louis and their capital stock at 400 shares of $50 each; and again, on the same day, by the same mode and form, the same persons made another similar declaration in writing, recorded it in the same office declaring themselves another corporation by the name, the H. C. Yeager Transportation Co., for the carrying of freight and passengers as common carriers, fixing their place of business at St. Louis and their capital stock at 400 shares of $50 each; and again, on the same day, by the same mode and form, the same persons made another similar declaration in writing, recorded it in

the same office, declaring themselves another corporation by the name, the K. P. Kountz Transportation Co., for the carrying of freight and passengers, as common carriers, fixing their place of business at St. Louis and their capital stock at 300 shares of $50 each; and again, on the same day, the same persons, by the same mode and form, made another similar declaration in writing, recorded it in the same office, declaring themselves another corporation, by the name, the M. Moore Transportation Co., for the carrying of freight and passengers, as common carriers, fixing their place of business at St. Louis and their capital stock at 400 shares of $50 each.

That King was elected treasurer of all the companies mentioned, and that Kountz and King have ever since been the directors of said companies.

These allegations are supported by the second and third findings. (*Printed Transcript*, pp. 59 and 60).

That the substantial owners of all the steamboats named, executed certain bills of sale purporting to convey them in severalty to the said several transportation companies, as follows: the Carrie V. Kountz to the C. V. Kountz Transportation Co.; the Henry C. Yeager to the H. C. Yeager Transportation Co.; the Katy P. Kountz to the K. P. Kountz Transportation Co., and the Mollie Moore to the M. Moore Transportation Co., and afterwards, on September 14th, 1878, the steamboat J. B. M. Kehlor was conveyed to the M. Moore Transportation Co.

These allegations are supported by the third finding of facts. (*Printed Transcript*, p. 60).

In the sixth article of the libel it is alleged that the said Kountz, King and Sheble, being the directors of all the said transportation companies, united them all in the joint enterprise of carrying freight and passengers, as common carriers, on the Mississippi River and the waters tributary thereto, by the name, the Kountz Line, and by that name all the aforesaid transportation companies appointed one general agent, *to-wit:* John W. King, and occupied one general place of business in said city, and by that name they have always, ever since, carried on the said joint business of carrying freight and passengers, as common carriers; making all their contracts of affreightment with all persons shipping goods and merchandise by said Kountz Line; and by that name they have always, ever since, advertised and held out to the world all the aforesaid steamboats as the steamboats of said Kountz Line.

The seventh article of the libel alleges, that all the said several steamboats, above named, were and always ever since have been employed and navigated under the control and direction of said Kountz and King for and in behalf of the aforesaid transportation companies in the aforesaid common enterprise of carrying freight and passengers, upon the said Mississippi River and the waters tributary thereto, as common carriers, by the name, the Kountz Line, aforesaid, and ever since all the aforesaid steamboats have been

held out to the world as the steamboats of the Kountz Line aforesaid.

The answers of W. J. Kountz, J. W. King and the Kountz Line (page 22 of the printed transcript), show who were the real owners of these several steamboats at the time they were "*stocked*" in these companies, as follows:

The Henry C. Yeager.—W. J. Kountz, $\frac{8}{12}$; Van Hook, $\frac{3}{12}$, and Hazlett, $\frac{1}{12}=\frac{12}{12}$.

The Katy P. Kountz.—W. J. Kountz, $\frac{13}{16}$; Braithwaite, $\frac{3}{16}=\frac{16}{16}$.

The Carrie V. Kountz, (alias E. O. Stannard).—W. J. Kountz, $\frac{13}{16}$; Chas. H. Seaman, $\frac{3}{16}=\frac{16}{16}$.

The Mollie Moore.—W. J. Kountz, $\frac{13}{16}$; W. P. Anderson, $\frac{2}{16}$, and Graham, $\frac{1}{16}=\frac{16}{16}$.

They aver that the respective owners of said steamboats sold them to the respective transportation companies,—the Katy P. Kountz to the K. P. Kountz Transportation Company, the Carrie V. Kountz to the C. V. Kountz Transportation Co., the Henry C. Yeager to the H. C. Yeager Transportation Co., and the Mollie Moore to the M. Moore Transportation Co., excepting only $\frac{1}{16}$ of the Mollie Moore. The sales were made in the manner stated in the answer sixth article. (Printed transcript, page 23.)

These four transportation companies were stocked at $75,000, and the interest which W. J. Kountz had in the several boats, above stated, amounted to the sum of $59,687.50 in a capital stock of $90,000; but seven years thereafter, in December, 1879, Kountz had

changed his interest to his daughter's name, so that she held $81,680 of the capital stock.

The third finding of facts shows that the owners of the steamboats named received shares of stock as the consideration for their conveyances. "That W. J. Kountz never owned more than two shares of stock in the Kountz Line;" but an additional finding of facts, on page 66 of the printed transcript, shows how the capital shares of Kountz Line stock were *placed*, as follows: "On July 6th, 1874, six shares of the capital stock of the Kountz Line were owned by five persons, namely: W. J. Kountz, two shares, and said King, D. C. Brady, Van Hook and C. H. Seaman, one share each; and the residue of said stock, namely, 144 shares, was owned by the following named steamboats, each holding thirty-six shares, namely: the John F. Tolle, the Henry C. Yeager, the Mollie Moore and the Carrie V. Kountz; that the said shares so owned by said steamboats were held by them respectively at the commencement of this suit, except the thirty-six shares owned by the steamboat John F. Tolle, which were transferred to the steamboat J. B. M. Kehlor, when she was conveyed to the M. Moore Transportation Co., and they remained in her name at the commencement of this suit." (*Printed Transcript*, p. 66.)

The third finding (*Printed Transcript*, p. 60) states how the shares of the capital stock of these several transportation companies were held, as follows:

M. Moore Transportation Co.—400—Dec. 19th, 1879. Katy P. Kountz, the daughter of W. J. Kountz, 379

shares; Rogers (nephew of Kountz) King and W. J. Kountz, three shares—one share to each.

C. V. Kountz Transportation Co.—300—Nov. 4th, Katy P. Kountz, 241¾ shares; Braithwaite, 56¼ shares; King and W. J. Kountz, 2 shares—1 share to each.

K. P. Kountz Transportation Co.—400—May 21st, 1880. Katy P. Kountz, 323 shares; Clement Seaman, 74 shares; King, Charles Seaman and W. J. Kountz, 3 shares—1 share to each.

H. C. Yeager Transportation Co.—400—Dec. 19th, 1879. Katy P. Kountz, 397 shares; King, Rogers and W. J. Kountz, 3 shares—1 share to each.

The steamboats J. B. M. Kehlor and Mollie Moore, C. V. Kountz (*alias* E. O. Stannard) and Henry C. Yeager, were stockholders under this singular arrangement in the Kountz Line Co., 144 shares of the capital stock of that company being in them.

These several transportation companies, including the Kountz Line company, were, in stock-jobbers' phrase, stocked at ninety thousand dollars, and Katy P. Kountz, the daughter of W. J. Kountz, held eighty-one thousand six hundred and eighty dollars of the so-called stock-shares!

The six finding (*Printed Transcript*, pp. 60 and 61) states: "All said companies, including the Kountz Line, had their business offices *in the same room* on the wharfboat of the Kountz Line at the foot of Myrtle street, St. Louis. The Kountz Line, by means of advertisements in newspapers, placards, handbills and cards, advertised the Kountz Line, set

forth the advantages offered by the boats of that line, their low rates of freight, etc., and announced that it was ready to contract for the carrying of goods and produce by *Kountz Line boats.* Usually one, sometimes two or more of the boats belonging to said transportation companies, were mentioned in said advertisements, placards and handbills, *as belonging to said Kountz Line.* It made out bills of freight upon blanks headed "Kountz Line St. Louis and New Orleans Packet, *but the bills were in the name of the particular steamboat to which the freight was due.* Bills of lading for goods shipped on the steamboats belonging to said transportation companies were usually signed, "*John W. King*, agt. *Kountz Line, St. Louis*," by a stamp, but they were sometimes signed by the clerk of the steamboat on which the goods were shipped.

The Kountz Line sometimes purchased produce and merchandise for the purpose of its being shipped upon the steamboats belonging to said transportation companies to enable the boats to have freight; none of the steamboats were ever advertised by the name of any of the corporations that owned them, and the goods purchased by Kountz Line to make freight were usually bought and paid for by the Kountz Line, and drafts were drawn against said shipments on the consignees by the Kountz Line in the name "*Kountz Line*," and all moneys, whether received for freight carried by said several steamboats, or for goods shipped and sold for their account, were remitted to W. J. Kountz or to John W. King, as the agents of Kountz Line, and was

deposited in bank at St. Louis to the credit of Kountz Line.

The seventh finding (*Printed Transcript*, p. 62) states: "From the date the H. C. Yeager Transportation Co., the C. V. Kountz Transportation Co. and the M. Moore Transportation Co., were incorporated, to the date said shipments were made on the steamboat Henry C. Yeager, none of said transportation companies ever transacted any commercial business by their several and respective names, *but the same was done by the name of the Kountz Line.*"

These transportation companies, being corporations created by a general statute of the State of Missouri, the several citations against them were returned "not found," and the steamboat J. B. M. Kehlor, registered in the name of the M. Moore Transportation Co.; and the steamboat Katie P. Kountz, registered in the name of the K. P. Kountz Transportation Co., were seized under the 2d Rule in Admiralty.

March 22d, 1881, all the respondents appeared generally in the cause by Messrs. Singleton & Browne; that appearance is in the words following:

"Citizens' Insurance Co. et al. vs. Kountz Line et al. On motion of Singleton & Browne, proctors for the various defendants herein, and upon suggesting that they have been unable to obtain the various documents and titles necessary to file an answer, it is ordered that ten days further time be granted to file an answer."

March 22d, 1881, the M. Moore Transportation Com-

pany and the K. P. Kountz Transportation Company, submitted their motion to set aside the attachments levied on the steamboats J. B. M. Kehlor and Katy P. Kountz; on the 28th of the same month the motion was overruled. All the respondents, excepting only the H. C. Yeager Transportation Company, put in answers to the libel.

The District Judge dismissed the libel on the ground that the several transportation companies were not liable jointly for the defaults of each other, and the Circuit Court affirmed that decree. The libellants, those only whose demands were large enough to give this court jurisdiction, have appealed, to review the decree and judgment of the Circuit Court.

The findings of the Circuit Court show, "that the steamboat Henry C. Yeager left the city of St. Louis, May 21st, 1880, at 4 o'clock in the morning, having said goods and produce on board. The weather was clear and fine, and the water smooth, and so continued until after the disaster hereinafter mentioned.

On May 22d, about 2 o'clock P. M., a bolt in the stuffing-box of one of the piston rods of the engine of the Yeager broke, and for the purpose of repairing it, the Yeager was landed at a point called Big Eddy, on the Missouri bank of the river. She made an easy landing and was secured to the bank by a line from her bow with her stem up stream. She remained there from an hour to an hour and a half, until her machinery was repaired.

During this period she was leaking and making

water, and at its expiration she had listed to her starboard, and her starboard side was six to eighteen inches lower than her larboard side, and there was from two to three feet of water in her hold on the starboard side.

When her officers and crew undertook to take her out and away from the bank, they were not able to do so. She was aground on her larboard side and could be moved only a few feet forward or backward. The Lioness, a steam tug, which about this time came in sight, at the request of the master of the Yeager, made fast to her and pulled her out directly from the shore into the river. The Lioness then cut loose from the Yeager and proceeded down the river. It was then discovered that the Yeager was filling rapidly with water. By the order of her master she was run upon a bar about 80 yards distant, when, within eight or ten minutes after the Lioness had left her, she sank in about thirty feet of water and became a total loss. A part of the cargo of the Yeager, of the value of $31,720.41, was lost by reason of the sinking and loss of the said steamboat Yeager, being the same property mentioned in exhibit A to the libel. The libellants were the insurers, respectively, of the said cargo so lost for the sums stated in exhibit B, attached to the libel, and have paid to the owners of said cargo, respectively, said insurance money, as set out in said exhibit, and had been subrogated to the rights and claims which the owners of said cargo had, respectively, against the respondents for said loss and damage.

Said steamboat Henry C. Yeager, when she commenced her voyage on May 21st, 1880, was unseaworthy and so continued until her sinking and loss as aforesaid, on May 22d, 1880, and the said sinking and loss of the said steamboat Henry C. Yeager, and said loss and damage to her cargo, as aforesaid, were caused by, and was the direct consequence of, said unseaworthiness." (*Eighth and Ninth Findings. Transcript*, pp. 136 and 137. *Printed Transcript*, pp. 62 and 63).

That the insurers of the cargo mentioned paid $31,720.41, in consequence of a wrong committed by somebody is established by the findings above recited, and yet their libel has been dismissed, and they have been condemned in costs, even as against the H. C. Yeager Transportation Company, who, though appearing in the cause, remains mum and dumb through all the proceedings.

It is averred, that the goods mentioned were delivered to and were received by these transportation companies by the name, the Kountz Line, for them to take care of and safely carry the same to the consignees named, the dangers of the seas, rivers, fire and collision only excepted, and that the respondents, by the name Kountz Line, accepted the goods by that name for the purposes mentioned, and that the respondents caused the goods to be laden upon the steamboat Henry C. Yeager, which was then in an unseaworthy condition, and that in consequence of her unseaworthiness she

and they were wholly lost, wherefore libellants prayed judgment against the respondents jointly. Upon the facts, as found by Mr. Justice Woods, he declared, as matter of law, "That there was no joint liability of the respondents, or any of them, for the said loss of said cargo shipped, as aforesaid, upon the said steamboat Henry C. Yeager."

Appellants assign as error upon this branch of the case the following, *to-wit:* "The said Circuit Court erred in declaring, as matter of law, that there was no joint liability of the respondents, or any of them, for the loss of the said cargo shipped upon the steamboat Henry C. Yeager, or any part thereof, and that the said steamboat Henry C. Yeager and her owners, the Henry C. Yeager Transportation Company, were alone liable."

Whether the respondents are jointly liable for the sending of these goods upon an unseaworthy vessel, which caused their loss, is *the* question.

The sufficiency of the libel, that it shows, by the allegations set forth, the joint liability of all the transportation companies, including the Kountz Line, there is no doubt. It was vehemently assailed in the District Court by the respondents, on the ground that no joint acting of the respondents was averred. Upon the motion to release the steamboats Kehlor and Katy P. Kountz, the District Judge declared the libel good in law against all the respondents jointly, and refused to release the steamboats. Both parties must therefore

stand upon the finding of facts as they appear in the Record. Let the appellants recite them in ancient style.

June 24, 1872, William J. Kountz owned almost the whole of all the steamboats Mollie Moore, Henry C. Yeager, Katy P. Kountz and Carrie V. Kountz. By a species of legerdemain, Kountz created a corporation, and he said, Behold, there is no name better than mine, therefore, let it be called, *the Kountz Line*, and it was so; and Kountz said, Let the Kountz Line have a capital stock of $15,000, and let it be divided into 150 shares of $100 each, and it was so; and Kountz said, Behold, to my servants, John W. King and E. A. Sheble and other friends, I give four shares of that capital stock, and yet there are 146 shares to be disposed of, upon whom shall I bestow these? Now, see, to myself I have taken two shares and the remainder thereof, 144 shares, let them be given to the good steamboats, Mollie Moore, Henry C. Yeager, Katy P. Kountz and Carrie V. Kountz, 36 shares to each, and it was so; and Kountz said, Aha, behold, steamboats are shareholders of the capital stock of the Kountz Line, and Kountz laughed loudly. To the Kountz Line Kountz gave a little wharfboat which he tied to the bank of the Mississippi River, at the foot of Myrtle street, in the City of St. Louis; and the Kountz Line waxed very great in the sight of all the great merchants in that city, and the Kountz Line carried many passengers and much goods and merchandises upon the Mississippi River.

But Kountz being a creative genius, rested not satisfied with a single creation, so, again, November 13th, 1872, he commanded his servants, King and Sheble, to appear with him before the Recorder of Deeds of the City of St. Louis, and there he said to the Recorder of Deeds, Let there be four other corporations created to take title to the steamboats, Mollie Moore, Henry C. Yeager, Carrie V. Kountz and Katy P. Kountz, and let one be called the M. Moore Transportation Company, and let another be called the H. C. Yeager Transportation Company, and let another be called the C. V. Kountz Transportation Company, and let another be called the K. P. Kountz Transportation Company, and let the last have a capital stock of 300 shares, and let each of the others have a separate capital stock of 400 shares, and let all the shares be valued at $50 each share, and it was so. And Kountz said, Behold, I possess $\frac{8}{12}$ of the steamboat Mollie Moore, and $\frac{13}{16}$ of the steamboat Henry C. Yeager, and $\frac{13}{16}$ of the steamboat Carrie V. Kountz, and $\frac{13}{16}$ of the steamboat Katy P. Kountz, and see, I am liable for the defaults of my servants and agents who control and manage these steamboats, now go to—Let these steamboats be transferred to the several and respective corporations for whom they are severally and respectively named, and it was so.

And Kountz said, Let my servant, John W. King, be General Agent and Treasurer of the corporations I have created, and let me be the President of them all, and it was so.

And, at the foot of Myrtle street, in the City of St. Louis, in a small room, on the little wharfboat called Kountz Line, Kountz and King assembled themselves together, and Kountz said, Let the M. Moore Transportation Company, the H. C. Yeager Transportation Company, the C. V. Kountz Transportation Company and the K. P. Kountz Transportation Company be remembered no more, and let their names be forgotten among men, for have I not created them only to take title to the steamboats Mollie Moore, Henry C. Yeager, Carrie V. Kountz and Katy P. Kountz? and let the Kountz Line only be mentioned and known among men, and let all the business of all these corporations be carried on by the name, the Kountz Line, and let all these steamboats be advertised as the steamboats of and belonging to the Kountz Line; and let goods, wares and merchandises be bought, by the name, the Kountz Line, to make freight for all these steamboats, and let them be shipped, by the name, the Kountz Line, to distant places, and let drafts and bills of exchange be drawn against all shipments by the name the Kountz Line, and let all the freights to be earned by these steamboats be received by the name the Kountz Line, and let all money received be deposited in bank in the name, the Kountz Line, and let all contracts of affreightment and all business, of every kind, name and nature, concerning these steamboats and the several corporations to whom the titles of the steamboats have been given, be carried on and be done in the name, the Kountz Line, in this little room on

this little wharfboat, and let the Kountz Line be the *Alpha* and the *Omega* in all the matters and things aforesaid, and it was so.

And behold, all these companies by the name, the Kountz Line, carried many passengers and much goods and merchandises, and all their moneys were received and deposited in bank by the name, the Kountz Line, and all the business of the corporations was carried on by Kountz and King, by the name, the Kountz Line, in the little room on the little wharfboat at the foot of Myrtle street, St. Louis, for seven years, and *the Kountz Line* became a great name in the great valley of the Mississippi.

Now, when the steamboats Mollie Moore, Carrie V. Kountz, Katy P. Kountz and Henry C. Yeager were well stricken in years, Kountz said, Let there be no repairs, and there was none; and behold, many people sent much goods and merchandises of great value to this Kountz Line for this Kountz Line to carry them to the consignees thereof, and they were put upon the steamboat Henry C. Yeager, into whose old mould hold the muddy Mississippi through her seams streams, and at the bank she sank, but, being pulled to a bar not far, she went down in deep steep thirty feet, and the goods and merchandises were lost to the great amount of $31,720.41, and there was great lamentation.

Now, the people who suffered these great losses came unto Kountz and said, Why hast thou dealt so wickedly with us,—why didst thou lade our goods upon the frail steamboat Henry C. Yeager? and Kountz an-

swered, What have I to do with thee? See, I have now only a single share of stock in these transportation companies, for, have I not given to my little daughter Katy, 397 shares of the capital stock of the M. Moore Transportation Co., and 397 shares of the capital stock of the H. C. Yeager Transportation Co., and 241¾ shares of the capital stock of the K. P. Kountz Transportation Co., and 323 shares of the capital stock of the C. V. Kountz Transportation Co.? Katy is now the owner of eighty-one ninetieths of all the capital shares of these companies. I have nothing to say to thee, go ask the H. C. Yeager Transportation Company to respond to thy losses, and the answer thou shall receive shall be this, Comest thou to me? Demand thy losses of the Father of Waters, for we have nothing. And turning away, disconsolately, from Kountz, King, Katy and these transportation companies, these sufferers come to JUSTICE, and what shall the answer be?

POINT I.

Appellants grounded their right to maintain this suit against all these transportation companies upon the fact that they carried on *one* business, at *one* place, in one room, by *one* name, for more than seven long years. Appellants believe that where two or more persons occupy one store, and buy and sell goods by one name, they are all liable for goods bought by that name at that store.

If A & Z own two ships, may they not consent

to employ both in the business of common carriers, by a common business name, at a common bnsiness place? Certainly they may; and, if they do it, are they not carrying on together the business of common carriers? Certainly they are. If A owns the ship Nubia, and Z owns the ship Nude, may they not consent to carry on the business of common carriers by the name, The Kountz Line, at Room 10, Trinity Building, 111 Broadway, New York City? Certainly they may; and if A & Z establish their place of business at Room 10, Trinity Building, 111 Broadway, New York City, and for all business transacted for account of the ship Nubia, A transacts it by the name, The Kountz Line, and for all business transacted for account of the ship Nude, Z transacts it by the name, The Kountz Line, do not these facts show that A & Z do carry on jointly the business of common carriers by the name, The Kountz Line, at Room 10, Trinity Building, 111 Broadway, New York City? It seems to me they do. It seems to me, the instruments employed by A & Z, whether they be ships or horses and wagons, or railways; whether they be owned wholly or in part by A & Z, or be hired by them, are not material. The pertinent inquiry in all such cases must be? Has the business of A been carried on by the name, The Kountz Line, at Room 10, Trinity Building, either *in propria persona* or by his consent? and the same inquiry respecting Z must be propounded in the same words. If both questions be answered *yea*, then all further inquiry seems unprofitable, because, as to persons deal-

ing with A & Z, a conclusive presumption of law arises upon the facts proved, namely: A & Z do carry on their business jointly by the name, The Kountz Line.

By what name did the M. Moore Transportation Co., the K. P. Kountz Transportation Co., the H. C. Yeager Transportation Co., and the C. V. Kountz Transportation Co., carry on their business? The seventh finding of facts answers the question as follows, From the date they were incorporated to the date said shipments were made on the steamboat Henry C. Yeager, none of said transportation companies ever transacted any commercial business by their several and respective names, but the same was done by the name, the Kountz Line.

At what place did all the transportation companies carry on their business? The sixth finding of facts answers the question as follows, All said companies, including the Kountz Line, had their business offices in the same room on the wharf boat of the Kountz Line at the foot of Myrtle street, in the city of St. Louis. The Kountz Line, by means of advertisements in newspapers, placards, handbills and cards, advertised the Kountz Line, set forth the advantages offered by the boats of that line, their low rates of freight, etc., and announced that *it was ready to contract* for the carrying of goods and produce *by the Kountz Line boats.* Usually, only one, but sometimes two or more of the boats, belonging to said transportation companies, were mentioned in said advertisements, placards and handbills, *as belonging to said Kountz Line.* It made out bills of

freight upon blanks headed, "Kountz Line, St. Louis and New Orleans Packet," but the bills were in the name of the particular steamboat to which the freight was due. * * * Bills of lading for goods shipped on the steamboats belonging to said transportation companies were usually signed, "John W. King, agent *Kountz Line, St. Louis*," such signature being made with a stamp, but bills of lading were sometimes signed by the clerk of the steamboat on which the goods were shipped. The said Kountz Line sometimes purchased produce and merchandise for the purpose of its being shipped upon the steamboats belonging to said transportation companies to enable said boats to have freight; but the sum paid for such produce and merchandise so purchased was always charged by the Kountz Line to the transportation company in whose interest it was purchased. None of said steamboats were ever advertised by the name of any corporation that owned them, and goods purchased by said Kountz Line to make freight for said boats were usually bought and paid for by said Kountz Line, and drafts were drawn against said shipments on the consignees by said Kountz Line in the name of the Kountz Line, and all moneys, whether received for freight carried by said several steamboats, or for goods shipped and sold for their account, were remitted to said W. J. Kountz or to John W. King, as the agent of said Kountz Line, and were deposited in bank to the credit of the Kountz Line.

Suppose this suit had been prosecuted in a court of common law before a jury? Is there a judge in the world who would have taken the case from the jury on the ground that there is no evidence tending to show that all these transportation companies carried on jointly the business of common carriers?

The learned judge finds these transportation companies owned no property in common. But he also finds that all moneys, whether received for freights earned or goods carried by these steamboats, or for goods bought, shipped and sold to make freight for them, were deposited in bank to the credit of the Kountz Line—the name by which they carried on their business. Was that not property in common? But, if they had no property in common, what of that? It is demonstrated clearly that A and Z, being separate owners of several ships, may carry on jointly the business of common carriers with those ships. If A and Z debit each ship separately with the moneys expended for it, and credit each with the moneys accruing for it in their business, how can these facts concern persons who deal with A and Z by their common business name? How can the mode and form of stating their accounts among themselves and their ships affect their dealings with the public? The public cannot know how they keep their private accounts!

Suppose Kountz had bought in the name of the Kountz Line a quantity of produce and shipping it on the steamboat Henry C. Yeager to New Orleans, it had been among the lost cargo? When the seller brought

his bill to the Kountz Line for payment, would he be bound to look to the H. C. Yeager Transportation Company, who had nothing, for his debt, or to the persons, natural or artificial, who had been buying and shipping such goods to make freights for all these steamboats for seven years, by the name *Kountz Line?*

The case of *Swan vs. Steele*, 7 East, 210, comes nearer to the case at bar than any other I have read. Wood & Payne were partners by that name as grocers; Wood & Payne and Steele were also partners in the cotton trade by the name, Wood & Payne. *They carried on both businesses at the same place.* Wood & Payne, as grocers, endorsed a bill and failed; and the question was, whether Steele could be held as an endorser. Lord Ellenborough said, The question is too plain for argument. See also, *Allan vs. Coit*, 6 Hill, 318; *Bank of Rochester vs. Monteath*, 1 Denio, 402; *Bank of South Carolina vs. Case*, 8 B. & C., 256; *Drake vs. Elwin*, 1 Caines, 184; *The Barnett Line of Steamers vs. Blackmar*, 53 Ga., 108; *Stevens vs. Haven*, 14 Vt., 544; *Grief vs. Boudousquie*, 18 La. An., 631; *Bigelow vs. Eliott*, 1 Cliff., 28.

POINT II.

Second. The Court erred in declaring as matter of law that the claims of the intervening libellants Jacob Walter, G. D. Williamson, W. G. Wilmot & Co., and the Bernard Coal and Transportation Co., amounting to the sum of $1,586.80, were valid liens upon the steamboat J. B. M. Kehlor.

Third. The Court erred in declaring as matter of law that the claim of the said W. G. Wilmot & Co., amounting to the sum of $475, a valid lien upon the steamboat Katy P. Kountz.

The decree of the Circuit Court allowing the claims of W. G. Wilmot & Co., the Bernard Coal and Transportation Co., G. D. Williamson & Co., and Jacob Walker, is *coram non judice* and void.

Appellants' suit is *in personam* against the respondents *personally*.

The District Court could not take jurisdiction of the suit of Wilmot & Co., and others who style themselves *intervenors*, because there was no citation issued against either the steamboats J. B. M. Kehlor or the Katy P. Kountz.

No admiralty court can take jurisdiction *in rem* until citation has been issued and served, and no person is bound to take notice of a proceeding *in rem* until all the world has been cited by publication.

The District Court dismissed all the so-called libels of intervention, because that Court had no power in the premises to do anything but to dismiss. If the District Court had no jurisdiction *in rem*, How can the Circuit Court have any?

After the steamboats were sold, and the proceeds were brought into Court, Wilmot and others libelled the steamboats *in rem* for coal supplied years ago. The Marshal had previously sold only the interest the M. Moore Transportation Co. and the K. P.

Kountz Transportation Co. had in the steamboats. That sale left lien holders safe as against the boats themselves, and the lien holders could have prosecuted their libels, had they pleased to do so. They did not petition against the proceeds of sale; had they done so, appellants would have been called to contest their right to share in the proceeds. Appellants were not concerned in the proceedings *in rem*, which were being prosecuted by the lien holders against the steamboats.

Appellants respectfully submit all these views to the Court and pray the Court here to reverse the judgment of the Circuit Court, and give such judgment as ought to have been given by the Circuit Court.

O. B. SANSUM.

For Appellants.

122-5-83

Supreme Court U.S.
FILED
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JAMES H. McKENNEY,
CLERK.

Supreme Court of the U. S.

October Term, 1886.

No. 136.

SUN MUTUAL INSURANCE COMPANY ET AL,

vs.

THE KOUNTZ LINE; H. C. YEAGER TRANSPORTATION COMPANY ET AL.

JOHN A. CAMPBELL,
Of Counsel for Appellants.

JOHN MURPHY & CO., PRINTERS AND STATIONERS, BALTIMORE.

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I.

A Statement of the Case as Shown in the Record.

The appellants are eight Insurance Companies which filed a joint libel in the District Court of the United States at New Orleans, in admiralty and in personam, against the appellees. That Court dismissed the libel at the hearing. On appeal to the Circuit Court the decree of the District Court was affirmed in favor of all the appellees in this Court; and comes to this Court by appeal of the libellants.

The steamboat Henry C. Yeager commenced a voyage from St. Louis to New Orleans the 21st of May, 1880, and proceeded about eighty miles when she became a wreck, and the boat and her cargo of merchandise and products were submerged and lost. The Circuit Court decreed that the Henry C. Yeager at the commencement of the voyage, and during the voyage, and at the time of the

loss was *unseaworthy*, and that the wreck was the direct result of such *unseaworthiness*. The decree condemned the vessel and her *owner*, the Henry C. Yeager Transportation Company to damages and costs. The Insurance Companies had paid $31,720.14 and had been subrogated to the claims of the shippers. No appeal was taken from this part of the decree. The exhibits to the libel show the shipments, Record, pp. 8–12. The decree, Record, p. 62, fo. 136. The decree of the Circuit Court, however, denied the complaint made against the other parties and dismissed the libel against those parties.

II.

Matter of Controversy in this Court.

The steamboat Henry C. Yeager was conveyed in the year 1873, to the Henry C. Yeager Transportation Company, a corporation composed of three persons who procured a charter under statutes of Missouri for the purpose of conducting the business of common carriers on the Mississippi river and its tributaries. The steamboat Henry C. Yeager and this company were the subjects of condemnation for damages and costs as we have stated. This boat is charged to have been employed in connection with *the Kountz Line*, and that this *Kountz Line* was responsible because of the *unseaworthy* condition of the Henry C. Yeager, one of the line. This makes it proper to examine the composition of the *Kountz Line* and the relations existing among the constituent parts of that line.

III.

In June, 1872, five persons, Wm. J Kountz, John W. King, W. W. Otis, C. H. Seamon and Charles Scudder obtained a charter for the Kountz Line under the Missouri statutes. The capital was $15,000, divided into 150 shares of $50. This charter provided for the ownership of the corporation of every form of steamboats, tugboats, wharfboats, and any other watercraft for

conducting business of carriers on the Mississippi river and its tributaries, and the transfer of boats, freights, passengers, goods and merchandise, the use of wharfboats and others, and to do a general river business. The capital of this Kountz Line was invested in one wharfboat which was stationary at the bank of the river in St. Louis. This corporation does not acknowledge an ownership of any other watercraft.

Three persons who were the corporators of the Henry C. Yeager Transportation Company simultaneously organized the Mollie Moore Transportation Company, the Carrie V. Kountz Transportation Company and Katie P. Kountz Transportation Company in February, 1873. Each of these companies acquired one steamboat. The Kountz Line then was composed of the five corporations and five boats, including the wharfboat.

The Circuit Court in the findings of the facts states, that on the 6th of July, 1874, six shares of the capital stock of the Kountz Line (Corporation) was held as follows: Wm. J. Kountz, *two* shares, and one share each to John W. King, D. C. Brady, Van Hook, C. H. Seamon. The remainder of 144 shares was owned, it is stated (by the Court), by the following named steamboats, each thirty-six shares, viz.: the John F. Tolle, the Henry C. Yeager, the Mollie Moore, and the Carrie V. Kountz, that these shares were so held at the commencement of this suit, except the thirty-six shares owned by the John F. Tolle, were transferred to the steamboat, Wm. B. M. Kehlor, when she was conveyed to the Mollie Moore Transportation Co., and this continued till the commencement of this suit. Record, p. 66, fol. 145.

The record enables us to ascertain the conditions of ownership of the shares in these steamboats, so as to determine the personality that is to be found in this curious contrivance.

The shares of the Mollie Moore Transportation Co. were in the name of Katie P. Kountz, 397 shares. One share each was held by Wm. J. Kountz, John W. King and Thomas Rogers. The whole capital is 400 shares, $50 each. The Henry C. Yeager

Transportation Co. was shared among Katie P. Kountz, 379 shares; Wm. J. Kountz, John W. King and Thomas Rogers, one share each, 382 shares.

The Carrie V. Kountz Transportation Co. was shared: Katie P. Kountz, 323 shares; Clement Seamon, 74 shares; Wm. J. Kountz, J. W. King and C. H. Seamon, one share each.

The Katie P. Kountz Transportation Co. was shared: Katie P. Kountz, 241¾ shares; Wm. Brathwaite, 56¼ shares; Wm. J. Kountz and John W. King, one share each, 300 shares in all of $50 each. We find that in the four boats holding the 144 shares in the Kountz line, that Katie P. Kountz held 1,340¾ shares in the aggregate; Clement Seamon, in one of the companies, 74 shares; Wm. Brathwaite, in one boat, 56¼ shares. Wm. J. Kountz holds four shares in the transportation companies, and John W. King, four shares; Rogers, two shares, and Seamon, one share. One of the statements of an answer signed by King, alleges that he had no real or substantial interest in the companies or the boats. Record, fol. 50. Neither had Sheble who aided in the fabrication of the charters. It appears in the record that the daughter of Wm. J. Kountz was not an original holder of any of the shares of stock which appears now to be held in her name. Wm. J. Kountz has been uniformly the President of all of these companies for some years before May, 1880. John W. King has been Secretary and General Agent of the Kountz line and the other companies. Thomas Rogers appears upon the record as a director.

IV.

The Kountz Line and its Connections.

The Kountz Line is a corporation with all of the powers necessary to carry on whatever transportation business which the Mississippi River, or its tributaries or banks fairly requires. It professes not to have obtained any property in vessels and to have had no participation in the earnings of these transportation com-

panies. The Circuit Court finds it was the general agent of all of the companies, but the definition of the agency is not stated with precision. It is stated that the companies have no property in common. The wharfboat charges for services, and fees are paid for the use of that boat by the other companies, amounting to $100 to $150 for each trip. Wm. J. Kountz, John W. King and Thomas Rogers officiate with the same title for all of these corporations, and each of the corporations has its office in the same room of the wharfboat.

We are not informed of the manner of holding the corporate meetings. The daughter of Wm. J. Kountz would seem to have a good working majority among all of the corporations. How the four steamboats manifest their preferences and policy has not been shown in the report made by the Circuit Court. The Circuit judges in the finding of facts startle us with this statement. "*That from the* date said Henry C. Yeager Transportation Company; said C. V. Kountz Transportation Company; said K. P. Kountz Transportation Company; said Mollie Moore Transportation Company were INCORPORATED (February, 1873), NONE *of said transportation companies* ever transacted any *commercial business* by their *several* and respective names, *but the same was done in the name* OF THE KOUNTZ LINE, or in the name of the *individual boats* belonging to *said transportation* companies." Record, p. 62, fol. 135. These companies were chartered to conduct a *commercial business.* They described their business and assumed the name in which the business should be done. Such an interdiction of the use of that name in any department of the business is a fact of significance. In the seven years of a widespread and active business no one has ever made a contract with the corporation in its corporate name. Corporations must be authorized by the Legislature or according to law, and a name must be given to them which cannot be changed except by the same authority. The judges of the Circuit Court have designated names in which some business has been transacted. The name KOUNTZ LINE has been some-

times employed by these companies in the transaction of commercial business. The proper name of the company has never been employed in any one transaction.

We quote again from the report of the judges of the Circuit Court. "The Kountz Line by means of advertisements in newspapers, placards, handbills and cards *advertised* the *Kountz Line*, set forth the advantages offered by the boats of that line, their low rates of freight, &c., and *announced* that it *was ready to contract for the* carrying of goods and produce by the *Kountz Line* of boats. Usually only one, but sometimes two or more of the boats belonging to the transportation companies were mentioned in said advertisements, placards, handbills, *as belonging to the Kountz Line.*" There is not an adminicle of evidence that these boats were advertised in the name of the transportation companies. The contrary of this is distinctly found to be the fact by the judges. Record, p. 61, fol. 131.

We assume that these advertisements were habitual. That they were widespread. That they made the impression intended to be made by the authors. They were used in cities, towns, landings and among the community having freights to be transferred through the Mississippi river.

The Kountz Line advertised the superlative merits of the Kountz Line, sometimes in prose, at other times in poetry, at all times in the fulness and force of the occidental oratory of the inhabitants of the mighty Mississippi Valley.

The bills of lading were generally signed by "John W. King, agent of the Kountz Line, St. Louis;" such signature being made by a *stamp*, but they were sometimes signed by the clerk of the boat on which the goods were shipped.

The Kountz Line usually made out bills of freights upon blanks headed "Kountz Line, St. Louis & New Orleans Packet," but the bill was in the name of the boat to which the freight was due. The usual bills of lading were issued for the shipments made on the H. C. Yeager, the 21st of May, 1880. They contained a

contract to deliver the consignment of freight to the consignee at New Orleans. The nature of the freight and its value is shown by the papers of the insurance companies. The value is $31,720.14. The signature was made by King as the agent of the Kountz Line. The Kountz Line, J. W. King and Wm. J. Kountz filed a joint answer, sworn to by King; they say: "Wm. J. Kountz, John W. King and Thomas J. Rogers *as* officers and directors of the Henry C. Yeager Transportation Company placed the steamboat Henry C. Yeager on berth at the port of St. Louis, on or before May 21st, 1880, for a voyage to New Orleans and intermediate ports and places, and for a consideration arranged with the Kountz Line for the use of its wharfboat for loading purposes, but that the said boat did not belong to the Kountz Line, nor was she designated as a boat belonging to the Kountz Line to make any voyage or carry any freight. These three persons were president, secretary and officers of the Kountz Line as well as of the Henry C. Yeager Transportation Company. The Circuit Court has reported that this boat *was never advertised* in the name of the *Transport Company;* that the Transport Company never made a contract in any commercial transaction. The bills of lading are issued by the agent of the Kountz Line, and in that name these persons have answered that they put on berth a steamboat proved to be entirely *unseaworthy* and *unfit* to make a voyage even in clear weather, in an ordinary stage of the river.

The facility with which the Kountz Line displays its fraud and craft has been exhibited in the answers. The transport companies have been assisted by the employment of the same persons in the same officers. Kountz is the president of each of the five corporations and King is the secretary. Whenever it is convenient to assign some act to a transport company, the act is ascribed to it and the act is done *as officers of that company.* The Circuit Court found that there was no appearance of any one of these companies before the public, but that they used the name of the Kountz Line or the name of the boat. There was a sufficient reason for the unbroken

silence in regard to them. An enquiry into the ownership of the boats would have shown the sandy foundation of the claims of the line for solidity and responsibility. Kountz had so arranged that no right which could be attached or seized could be found in his name. His unmarried daughter appears as the owner of every right of pecuniary value that could have existed.

No prudent skipper would have entrusted property upon a line where the appearances were so suggestive of dishonesty and fraud in case of any disaster. No approaches to the transport corporation were left open or unguarded. The names of the transport companies are not found among the shareholders of the Kountz Line. Only the names of four steamboats.

The shareholders in the steamboats, with two exceptions, are dependants upon Kountz. King disclaims having any interest in the boats or the companies in this answer filed in his name, and in which the Kountz Line and Kountz are respondents.

The Kountz Line during a period of prosperity, perhaps, was overbearing and vainglorious, and employed all of the arts which a free use of the press to acquire notoriety and concentrate attention and interest to itself. It is confronted by the testimony it afforded. An important enquiry arises as to the disposition of the earnings of these boats.

The report of the Circuit Court inform us: 1. "The *Kountz Line* sometimes purchased produce and merchandise for the purpose of its being shipped upon the steamboats belonging to said transportation companies, in order to enable said boats to have a freight, but the sum paid for such produce and merchandise was always charged by the *Kountz Line* to the transport company in whose interest it was so purchased. 2. The goods purchased by the Kountz Line to make freight for boats was usually *bought and paid* for by the Kountz Line, and that drafts were drawn against the shipment on the consignees *by the Kountz Line* in *the name of the Kountz Line.* 3. The Kountz Line COLLECTED THE DUES of all other of the companies before mentioned. 4. ALL MONEYS, whether

received for FREIGHT carried by the *several steamboats*, or, for goods shipped and sold for their account was *remitted* to said *Wm. J. Kountz* or *John W. King* as the agents of the Kountz Line, *and was deposited in bank at St. Louis to the credit of said Kountz Line.* 5. The Kountz Line kept a separate account with each one of said companies and paid to each one its separate earnings. The same course was taken when the goods were bought to make a freight. The profits of the adventure were put to the credit of the company and paid as separate profits. The companies had no community of property or of profits. Nor was there any between any of them."

VI.

This statement of the organization arrangements for the conduct of business among these five corporations, and their correspondence to the customs and usages of this department of commercial business will enable us to determine their value and their import upon the cases submitted to the Court.

1. We have ascertained that the *Kountz Line* collected the DUES arising from the business of this association of steamboats and all moneys derived from any abnormal transactions, such as the purchase of goods and products were managed *altogether* by the Kountz Line. The Kountz Line was the repository of all of the money of every one of these associates and kept in that name.

This implies that the Kountz Line must apply all of the moneys for the defrayment of every expenditure for wages, supplies, repairs, maintenance and charges. "The revenue is the State." The management and safe-keeping, and control of the revenues must in every commercial enterprise be the chief and to determine its operations.

2. The suppression of the transportation companies in every one of the commercial transactions of the association; the suppression of all of them in all communications with the public generally through the advertisements, handbills, notices of all sorts, and the

engrossment of all of the notoriety, publicity, praise, glorifications for the Kountz Line must have impressed all with the connection that the Kountz Line was one single whole and answerable for whatever was done in that name before the public, and in the business of the line.

3. The manner of the advertisements; the evidence afforded of the contracts arising in the business; the superscriptions on the bills of lading, freight bills and other publications; the collection and retention of the money by the Kountz Line.

The commercial enterprise in purchasing goods and products to make a freight—the sale of such property and the appropriation of the proceeds—is all transacted by the Kountz Line.

4. There is no instance of a suit commenced by one of the companies in its name, nor the payment of taxes in their name, nor the performance of any civil act in the name of the companies, no meetings of stockholders, election of officers, no observances of days of accountability. That the accounts with the steamboats should be kept separately proves nothing, because that is done when the agencies are distinct, and the accounts made by a separate entity.

5. The division of the earnings in the conditions of this ownership shows that there could have been no better rule. The partnership is *leonine*. The Mollie Moore Transportation Company stands in the name of Miss Kountz, daughter of the President, she holds of that company, and the H. C. Yeager, all that was actually owned. Seamon owns shares in one company, and Brathwaite some in another company, but the dominant power is with the daughter of Wm. J. Kountz, and this power dominates the wharfboat and Kountz Line. This mode of division, if one were ever made on this basis, or one agreed to, would not affect questions which arise upon this record as to A JOINT LIABILITY.

VII.

The Decree of the Circuit Court.

I.

The decree condemns the Henry C. Yeager Transportation Company as owner, and the steamboat Henry C. Yeager to the payment of damages and costs of the cause.

II.

The Circuit Court denied the demand of the libellants against the Kountz Line and the other companies after reporting the facts ascertained from the testimony, pp. 59–66; and the questions of law decided by the Court.

VIII.

Questions of Law.

I.

There was no joint liability among the respondents, or any of them for the loss of the cargo shipped upon the H. C. Yeager in May, 1880, but the owner of this boat and the boat itself are alone liable to the shippers of the cargo thereon.

II.

The libel of the appellants and the attachments served upon the steamboats J. B. M. Kehlor and Katie P. Kountz, are set aside and discharged with costs.

III.

The intervening libellants may be paid out of the money arising out of the sale of the boats attached and in Court after the costs and expenses for seizure, detention, and the sale of the boats shall be paid upon a rule declared in the decree. Record, pp. 64–66.

IX.

Assignments of Error.

1.

The appellants assign for error the direction that the libel and attachments be dismissed with costs to be paid by them. They aver that the appellees are jointly and severally liable in the manner and form as the Circuit Court have decreed in respect to the Henry C. Yeager Transportation Company and the steamboat Henry C. Yeager, with the costs of the suit and all expenses. They pray the annulment of that decree and the condemnation of the appellees to the judgment against the other parties.

X.

Points, Argument, Authorities.

1.

Prior to the conclusion of the contracts of affreightment described in the libel and the shipments on the steamboat Henry C. Yeager, the Kountz Line of steamboats consisted of the Henry C. Yeager, J. B. M. Kehlor, Katie P. Kountz and Carrie V. Kountz. These were employed, directed, controlled by the Kountz Line Corporation, and in the name of the corporation. The corporation advertised the boats as the Kountz Line; gave bills of lading in that name; collected the freights and dues of the boats as belonging to the line and held them in the name of the line. The advertisements, contracts, financial dispositions, assertions of identity and unity, and suppression of all names but that of the Kountz Line established the belief of the social character of the line and their mutual responsibility for the sufficiency of the line and for all contracts with the line.

II.

The Henry C. Yeager Transportation Company was organized in 1873 by the acquisition of the boat of that name. In December, 1879, the shares were distributed among Katie P. Kountz, 379, and one share each to Wm. J. Kountz, J. W. King, and Thos. Rogers. These three men were the president, directors and officers of this corporation on the 21st of May, 1880.

The result of the testimony in this cause is, that from 1873 till the termination of her career, the 22d of May, 1880, the name of her owner, the Transport Company, had never appeared in a single transaction of a commercial character; neither had the name of her owner appeared in any of the advertisements relative to the movements of the boat.

The owner of this boat (Transport Company) had not collected the freight and passage money, nor been a depositor of any of the earnings in the bank. It does appear that this boat, with others of the Kountz Line, were the subject of advertisements, cards, placards and handbills, as components of a steamboat line of much pretension. We may assume that there was enquiry in respect of the credit, stability, prosperity, and business of the line, but none of these enquiries have brought any one of the shippers of these unknown factors—the Transport Companies—to public observation. We are informed that the Kountz Line kept accounts with these boats, and whenever it appeared to be proper the Kountz Line purchased goods and products in order that the boat should make a freight and other profits. But the connection of the Transport Company was not made known to the public.

The joint answer of the Kountz Line, and of Wm. J. Kountz and Wm. J. King, contains this sentence: "And answering further, respondent say, that the Kountz Line *has not employed, owned, hired* or *navigated*, or *directed* the *running, employment*, hiring, or owning any steamboat or steamboats, either by its officers, directors, agents, or in any other manner, since its existence; all, the said

Kountz Line, under the terms of its charter, might have so done." Record, p. 21, fol. 46. Similar sweeping assertions of complete abstinence are to be found in the answers of the Transport Companies from any connection with other companies and other boats and a rigid attention to its own business. According to these, the bills of lading were made out and signed by the respective boats to which freight was sent. No bills of lading were issued in the name of the Kountz Line, nor signed by it; nor that the owners of said steamboats had surrendered the custody and control of any of the said steamboats—*but that* each collected its own freights and received them, and the Kountz Line only received from the said boats a valuable consideration varying from $100 to $150 for each trip for services rendered. Record, pp. 22, fol. 48; R., 29, fol. 65.

The manifest absence of truth in these answers is set forth with fulness in the report of the findings of the Circuit Court. The difficulty of reaching the truth with such respondents in the possession of much of the evidence may well be imagined. There has been expended upon the management of this cunning and deceitful arrangement a degree of ingenuity, craft, experience of the facilities for imposture upon the credulity of men, which honestly applied would have built a navy. These five corporations have the same organization—Kountz, president; King, secretary, agent, director; Rogers, a supernumerary officer, director.

The names of four of the corporations have been constantly veiled. They never appear in any act of commerce. But, Kountz, King and Rogers are their embodiment.

Whatever they say or do, may by some mental process be recorded as the act of the invisible corporation in their own minds, and represented as done by them when called for. In an answer sworn to by King, it is denied "that John W. King or E. A. Sheble were ever the real or substantial owners of either of said boats, nor did King or Sheble own any interest whatever in all or any of said boats." Record, fol. 47.

The omnipresence of Kountz and King in the Kountz Line and in the Transport Companies, is to be accepted by third persons as

the evidence of the existence and the appropriate action of the invisible, intangible, artificial contrivance existing in contemplation of Kountz and King, and which derive their christening from their manipulations. The bookkeeping of this trio, Kountz, King and Rogers has for its result the accumulation of all of the visible and tangible earnings of all of the corporations into the possession of the Kountz Line—there to be disposed of by the hand of Wm. J. Kountz.

III.

The Judges of the Circuit Court have in their report of the facts declared "none of said transportation companies have ever transacted any commercial business by their several and respective names, but the same was done by the name of the Kountz Line, or in the name of the individual boats belonging to said transportation companies." Record, 62, fol. 136.

The Court further declared "that none of said steamboats were ever advertised by the name of any of the corporations." The Court finds that the bills of lading and the bills for freight were made out on blanks wherein the Kountz Line was mentioned, and the name of the boat mentioned under the superscription, and that the signature habitually used was a stamp of the name and agency of the Kountz Line.

The answers of some of the respondents say that the word Kountz Line was used as a popular designation—a description of a connection of boats without more of meaning. It is not at all clear that the charter of the Kountz Line was not framed for the purpose of describing the line and the business to be done by the boats which should be connected with it.

The Transport Companies were a later product. The supremacy of the Kountz Line was attributable, perhaps, to the capacity and the craft of Kountz and King.

The facts do not appear. The supremacy is the dominant fact in the history—the predominant rule of the administration is to enhance the Kountz Line.

Upon the downfall of the line it has become absolutely necessary that this dominant fact should be denied, and so the answers have contested it with all of their might.

In the seven years of the life of this association there must have been thousands and tens of thousands of commercial transactions in which these boats and their officers were immediately concerned. None of them indicate the names of these occult corporations.

It sometimes happened that a single boat was idle—without a hope of a cargo. One can be profitably purchased and sold and a freight earned. The Kountz Line executes this commission in its own name. The names of the Transport Companies do not appear in advertisements; they were not found on the sides of the boats; they have no money in bank; they do not pay officers and men. The Kountz Line is the cash-keeper, the habitual creditor. We do not find testimony that the Henry C. Yeager was advertised as belonging to the transport corporation. If Kountz, King and Rogers put her on berth and received freight, the bills of lading indicate the Kountz Line as the recipient and gave contract of affreightment to the shippers. The placing on berth an unseaworthy boat is an offence—the contract by this act is broken the instant the voyage commences. The guilty party is the Kountz Line.

This party assured all persons of the solidity of this line and of the safety of the employment of these boats as carriers. They solicited business and proffered to make contracts.

The Kountz Line did not give a bill of lading in the name of the Henry C. Yeager Transportation Company. Such a document had never been seen either at St. Louis nor New Orleans, nor along the Mississippi river, nor its tributaries. Neither did the bills of lading emanate from the boat.

IV.

None of the transportation companies have at any time transacted any commercial business by their several and respective names is

the fact as reported to this Court. The Louisiana Code requires a corporation to have a name, and it is in that name do all their legal acts, although a slight variation in this name be not important.

C. C., 432;—so is the common law.

Shackelford vs. Dangerfield, L. R., 3; C. P., 307.

Wallace vs. Loomis, 97 U. S., 146; 10 Q. B., 389.

We do not impugn the validity of the contracts, nor of the mode of dealing because of the peculiarity of the habit of these parties. The Court tells us that sometimes the Kountz name was used, and then again the name of the boat. We find that the Kountz Line has for *shareholders* four separate boats.

A young lady, whose name appears to designate a boat, and a corporation, is the predominant stockholder in all of the Transport Companies.

But a fact like this would not accredit a steamboat nor a steamboat line. The rude work of transportation on the Mississippi river and its tributaries cannot be carried on under such ownership or guidance.

The searching examination of these parties brought to view the facts of double-dealing and imposture, which are discernible in the report of the Circuit Court. The public were not informed of the existence of the several corporations and confided in the representations made by the Kountz Line of the solidity of their association. The Kountz Line was the medium of communication between the public and the boats to be used for the work of transportation. The Kountz Line was regarded by the public and the public were taught by the Kountz Line to accredit as the commercial head of this association for the transaction of this commercial business. They claimed to be able to make contracts to bind the boats for any purpose of the business. The line solicited confidence, patronage, contracts and trust for the Kountz Line. They studiously avoided in their varied forms of advertisements any allusion to the Transport Companies.

These representations of singleness, of unity of operation and effort, the energy of the management and the magnitude of their transactions, increased their credit and the number of the shipments. The answers of these respondents denied the facts which have been found. The business which these answers describe is that of an open, frank and loyal attempt to supply a public necessity by industry, economy and fidelity. The boats are independent, the services are in no respect common. The responsibilities were avowed and each of the boats was answerable for its own acts by the employment of its own separate earnings.

The answers deny that there could have been mistake, for the reason that there had been no concealment nor disguise. The respondents pleaded that there had been no alliance, scarcely a connection. The Kountz Line put off its ostentation and arrogance, and affirmed that it had one wharfboat and had never been concerned with any others; neither had its officers or agents directed or had been concerned with any other. The insurance companies were surprised to hear that when a loss had occurred by an unseaworthy boat whose unfitness could be discovered by any considerate observer standing on the wharf, that this boat belonged to the notorious Kountz Line, and that it was unable to sustain itself in a fair day, ordinary stage of water, without any unusual pressure, but because of inherent weakness and inability, the enquiry was made into the construction of the Kountz Line, and the facts of the organization and management of the line. The answers appeared to contradict the events in the history of the line. The Kountz Line had no apparent ownership, unless the various issues of stock to Miss Kountz to the extent of nine-tenths of the whole constitute an appearance of ownership. The five separate corporations had for officers the same persons; the moneys earned by all of the corporations came directly to the KOUNTZ LINE for custody; this Kountz Line had for owners four steamboats, and Wm. J. Kountz, John W. King and two others with one share of stock each.

We have no testimony as to the meetings of stockholders, election of managers, appointment of the officers of the boats. The facts

do appear that the four *Transport Companies* have never transacted business of commerce in their own names, and have never been advertised as candidates for popular favor or patronage.

The exaltation of the Kountz Line and of Kountz and King has been carefully provided for. The name of Kountz Line is inscribed in the commercial documents exhibited in business; and there is no other name. This name is a corporate name; the charter confers authority to conduct each and every portion of the business that the five corporations have proposed as legitimate business. The use of such a charter is an imposition upon the public, in the form it is proposed to use it. The public would connect the charter with the business which appears to have been done. The Kountz Line corporation is nothing but the corporation to own, employ, charter, equip a number of boats to be used as common carriers, and for the demands of a river business. There is comprehension and apparent solidity in an arrangement of the kind.

The answers of these respondents dwindle down the name of the Kountz Line, as used at St. Louis, to what they call a popular designation, without any legal or commercial signification in the business of these companies. Apparently this was the view of the Circuit Court in deciding there was no joint liability. We reply to this decision of the Court.

1. The Henry C. Yeager Transportation Company, which is called for the Henry C. Yeager steamboat, on the 21st of May, 1880, had not during its existence, since 1873, performed in its own name one single act of commerce, or appeared by its own name in any commercial transaction—nor was advertised as prepared for such business. What was her relation to the public? The steamboat is a machine for commerce. Those who use this machine in affairs of commerce impose a liability on the boat for the value of the cargo. Those who employ this machine, as owners for profit, warrant seaworthiness, and must answer for defects. The Henry C. Yeager Transportation Company was liable, as the Court decreed, because that company was a party to the employment, though a

dormant and concealed party. The ostensible party is the Kountz Line. The placards and handbills announcing her employment, and calling for shipments, were made by that line—not as agent, but as principal. Concealed among the treasures of the line is the fact that all of the boats are the shareholders, the recipients of the earnings. These are held in the treasury of the Kountz Line. The Kountz Line is astute to find means to exalt the line. The public understand that this line of boats is the source of credit and favor, and the property is bound to meet the contracts in this business.

2: The Kountz Line had advertised the Henry C. Yeager as one of the line boats. She had been one since 1873, and was so when she advertised that a voyage to New Orleans was to be made. All that had been written by Kountz and King would be recalled to the mind of freighters.

Enquirers would be informed of the strength of the Kountz Line, the number of the boats. Insurance companies would assume risks with confidence, the number of and names of the boats would be known to the public. The transportation companies would be unknown—none had ever appeared in any commercial transaction. The insurance companies would hear that the bills of lading run in the name of the Kountz Line, and so too the freight bills. It would be heard that the Kountz Line had bought a full load of freight and made profits and had a bank account. The insurer would make his contract upon the representations in respect to the line. The question whether a liability be *joint* or *several*, or whether one or another or none be involved or obliged depends upon the facts. When these are ascertained the question is one at law. The joint liability or a partnership liability, "a case may be stated in which the sense of the parties to the contract that they shall not be parties, that one is to contribute neither labor nor money and not to receive profits; but if he will lend himself or his name to a firm so as to be recognized as a partner he becomes such, not upon the ground of the real transaction between them, but upon principles

of general policy to prevent the frauds upon creditors, or to which creditors might be subject if they were to suppose that they had lent their money upon the apparent credit of four persons when in fact they had only lent it to two of them, to whom without the others they would have lent nothing."

It is reasonable to suppose that this artful arrangement was conceived and carried into operation with some design to evade some liability the law attaches to commercial contracts. The obvious purpose was to obtain all of the credit, reputation and vigor which belongs to an association without exposing the property to seizure in case of disaster. It seems to be an arrangement whereby the property of Kountz should be kept out of view and not at all exposed, and at the same time that he should have advantage from its use. But the effect of the arrangement is to subject the line to the consequences of loss from the unseaworthiness of the line or of either of them.

Waugh vs. Carver, 2 H. B., 235.
Dickensen vs. Valpy, 10 B. C., 140.
Champion vs. Bostwick, 11 Wend., 575; 18 Wend., 175, S. C.; 40 Barb., 365; 14 C. B., N. S., 145; 16 C. B., N. S., 387; 16 Maine, 261; 16 C. B., N. S., 387, 824.
Lindley on Part., 92.
Hutchinson on Carriers, pp. 123–133.
Galloway vs. Hughes, 1 Bailey, So. Ca., 552.
Lawson on Usages and Customs, pp. 281–282.

V.

The cases show that a liability may arise out of the conduct of a party which has superinduced false expectations or occasioned a trust and confidence which is not justified without any fault on the part of the creditor. The Kountz Line has derived profits, patronage and public favor through the arrangements by which it has obtained control over the property which by the management of Kountz has been used to give credit and authority of the Kountz Line.

VI.

The Circuit Court decreed the dismissal of the attachments levied upon two of the boats of the Kountz Line as responsible for the unseaworthiness of the H. C. Yeager, a vessel of the line, and the consequent loss of the cargo. No opinion of the Court appears in the record. The conclusion of the Court was, that there was no joint liability among the respondents, or of any two or more of them. The Henry C. Yeager commenced the voyage the 21st of May, 1880. From mere inability and feebleness she perished miserably the following day. The guilt of employing such a vessel belongs entirely to the Kountz Line—the corporate body. The boat had been used for about seven years in that line and in that trade. All of the interest in the boat and corporation appeared to be held by Miss Katie P. Kountz—except that Wm. J. Kountz, John W. King and Thomas Rogers, President, Secretary and Officer, appeared as having one share each. The owner of the boat was the Henry C. Yeager Transportation Company. Till the submergence of the boat from the incorporation of the company, that corporation had never transacted a single matter of commercial business in its corporate name. Nor was it advertised in the name of that owner. The corporation did not issue bills of lading, collect the bills for freight, or have a bank account. The corporation owner did not place its name on the sides or at the front of the boat, nor wave a flag with that name on it. The being of this corporation was a *sad* one. It never exhibited a sign of corporate life. It was never known to exhibit a conscious and intelligent effort to exert a corporate faculty. The case is a melancholy instance of the effect of the transfusion of blood. Those experienced therapeutists, Wm. J. Kountz and John W. King, abstracted from these four corporate bodies the elements of vitality, and left them moribund, somnolent, with loss of speech, and the signification of words and the memory of events. The transfusion was into the veins of the Kountz Line. This line became alert, active, overbearing, usurping and flighty in speech and conduct.

There is no material difference in the experience of the other corporations. There was a purpose to destroy the identity of the several corporations. The arrangements to strengthen the Kountz Line, and to debilitate, and finally to discard the transport companies, except as coverts, had been near their completion when the disaster of the 22d of May occurred. The facts established prove that these transport companies performed none of the functions of commercial *corporations*, neither do we hear of them as *juridical persons*. The rule seems to have been inflexible that they should not speak, nor act, nor be named in any social relation.

The Kountz Line, as designed in the act of incorporation, was the project originally intended. The introduction of other corporations was an afterthought, and when the ascendency of Kountz was secured, they were put out of sight and deprived of any influence or recognition. At the date of the disaster to the Yeager they had disappeared. The answer of the Kountz Line is contradicted by the findings of the Circuit Court in every important particular in respect to the management of the business, and the public relations of the four transport companies.

VII.

The Circuit Court describes the functions of the Kountz Line as those of an agency. It asserts that the Kountz Line was the general agent of all of the corporations. Were the relation that of a partnership the conduct of the Kountz Line would have been more consistent with the relationship implied by that term. The error we assign in the conclusion of a Circuit Court is that it did not appreciate the significance of the facts stated. The Kountz Line performed every act of administration in the course of the business that has come distinctly to the observation of the Court. The Court finds that the four Transport Companies had their office in the wharf-boat, in the same room as the office of the Kountz Line—five offices of five corporations, the president and directors sitting cheek-by-jowl, day by day. This is manifest evidence of distinctness, separa-

tion without unity. The five boards are severally composed of Kountz and King and Rogers, unless C. Seamon be a member of one board. Not a resolution, nor contract, nor writing has been shown where these officers of these Transport Companies were parties. Their answers denied there was union, and go to the verge of denying any connection at all. The daily habit of the life of the corporations might have been established out of their books. The contrary of the statements in the answer is disclosed in the report. The fact that there was no disguise about the public action of the Kountz Line was continually manifest—the Kountz Line is found everywhere on the Mississippi river and the Mississippi valley. The Transport Companies, to employ a cant phrase of that region, "*were tied out*"—referring to some jockey habit of keeping a fast horse from the public view before the entries are made. The conduct of these parties show that the Kountz Line had the reins in its hand. It drove that line as it pleased; the other corporations had neither eyes to see nor ears to hear, except as directed by the Kountz Line. These corporations were required to be dumb and never to appear, not even during twilight. The organization was all arranged with reference to the fact that Wm. J. Kountz had placed in the name of his daughter the shares. Kountz was not a man to accept an agency.

VIII.

There is a form of partnership upon the Continent of Europe called an association of, or in, participation. The participants have no social name, nor community of contribution of money or property, there is no joint liability, the connection is not public, the participants participate in the results; the interest is all concentrated in these, and not otherwise nor elsewhere. It is confined to isolated or single transactions, easily concluded, and having only that continuity which is consistent with silence, the absence of publicity and of joint responsibility even in respect to each other—the creditor has no lien nor property. The respondents exhibit something like this in the manner of their defence in this suit.

Here were five corporations made according to the Missouri statute. They were projected by Wm. J. Kountz. He gave his own name to one, and the names of his daughters to two others. The Kountz Line was predestined to be the standard bearer. That corporation was endowed with every faculty to conduct all of the business that might be offered.

This Kountz Line was the manifestation of the organization. The other corporations were invisible. The Kountz Line was advertised as the principal—never as an agent.

When we examine the case presented in the pleadings of the line and the companies, it is seen that the facts pleaded did not exist and were not designed to exist.

The arrangement described by them has some of the qualities of a partnership in participation. The absence of all liability, of all communion of profit or of loss, of all notoriety in the conditions of a clear, direct and honest management, and a sense of duty to all of the customers. The transactions were multifarious, and the business continuous and exacting, embracing cities, towns, landing places, requiring connections with other forms of traffic. The invention displayed in exhibiting this defence, and in the arrangements of the line, cannot be supported.

IX.

A writer of great authority upon the law of partnership affirms that no general principle of law prevents a corporation from being a partner of another corporation, or with ordinary individuals, except the principle that a corporation cannot lawfully employ its funds for purposes not authorized by its constitution. It has been assumed by the legislature in a number of the statutes relating to companies, that companies may be shareholders, and at common law one corporation may be a member of another.

Lindley on Part., p. 86.

Ex-parte Contract Corporation, L. R., III Cha., 105; IV Cha., 232; 46 Conn., 136.

Allen vs. Woonsocket Co., 11 Rh. I., 288.
State Board vs. Citizen St., 47 Ind.
Greene's Ultra Vires, pp.

Hutchinson, in his work on Carriers, says that it is universally agreed that if any connection between carriers be made by which they become participants in common in the profits of the business, any one or all may be held liable to a loser. A partnership may be formed as well in the business of Common Carriers as in any other, between corporations engaged, as well as between individuals; and when established, it must be attended by the same consequences to the partners. He cites the cases from Wendell and Hutchinson on Car., pp. 123, 124. The proof of a partnership would be complete if the corporations were represented as constituting a line, or held out as jointly concerned, and thereby attracted business and obtained credit. Or if the line controlled the boats belonging to it as if they belonged to it. The omnipresence of Kountz and King throughout the line, and their control of all of its public arrangements in that name, and contracting liabilities which affect the respective boats, are evidence of the connection we charge had been made.

JOHN A. CAMPBELL,
Of Counsel for Appellants.

122-583

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1886.

No. 136.

SUN MUTUAL INSURANCE COMPANY ET ALS., APPELLANTS,

versus

THE KOUNTZ LINE, H. C. YEAGER TRANSPORTATION COMPANY ET ALS., APPELLEES.

BRIEF ON BEHALF OF THE APPELEES.

CHARLES B. SINGLETON,
RICHARD H. BROWNE,
For Appellees.

T. H. Thomason, Printer, No. 36 Natchez Street, N. O.

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THE KOUNTZ LINE, H. C. YEAGER TRANSPORTATION COMPANY ET ALS., APPELLEES.

BRIEF ON BEHALF OF THE APPELEES.

For the third time the appellees in this cause are required to defend their rights before a Court of Justice.

Every postulate laid down, and every argument now urged to support them, have been twice before (before the District and Circuit Courts) presented to the tribunals of the country. All the ingenuity and ability of the distinguished counsel have been taxed in vain, in other forums to maintain the positions they now ask this Court to take.

It is to be observed, in the very outset, that only two of the eight of the original libellants, in the District Court, have appealed to this Court, to reverse the decrees of the District and Circuit Courts; and only one of these, claims an amount which can give this Court jurisdiction, for the libel on behalf of the

Hibernia Insurance Company only demands $4829.73, and this without interest. Exhibit B, p. 14; Libel, p. 6, 12th Article. So that, in the very first line of one of the briefs filed on behalf of appellants, there is error, for "the appellants are" not "eight Insurance Companies," but only two of the eight, and one of these, it would seem, improperly so. All the others have acquiesced in the decree of the District or Circuit Courts.

The libel filed in the District Court sought to make the respondents herein liable jointly upon the basis, that the defendants so managed and conducted their business and held themselves out to the shipping mercantile world, in St. Louis, and elsewhere along the Mississippi River to New Orleans, as to make them partners in the business of common carriers, and, therefore, to impose upon all, any loss suffered by the neglect or misconduct of any one of the defendants.

A brief outline of the history of the case is necessary.

On the 24th June, 1872, the Kountz Line, one of the defendants, was incorporated under the laws of Missouri by five persons: W. J. Kountz, Charles Scudder, John W. King, W. W. Otis and Charles H. Seaman, were the incorporators and directors. W. J. Kountz and John W. King, two of the defendants, were elected President and General Agent, respectively.

The objects of the corporation were primarily "to build or purchase, use and employ one, or more wharfboats for the use and convenience of steamboats, etc., belonging to the stockholders of said Company," etc. Finding 1, p. 59.

It is not now pretended that this was not a legal corporation under the laws of Missouri.

It is alleged in the 3d and 4th Articles of the Libel (p. 2) that W. J. Kountz, King and one John A. Sheble, being the real owners of 4 steamboats (Carrie V. Kountz, Katie P. Kountz, Henry C. Yeager and Mollie Moore), surrendered the management and control of these boats to W. J. Kountz and King, to do a business

of common carriers on the Mississippi River, under the name of the Kountz Line, until the 16th December, 1872; but there never was a syllable of evidence to support this, and no such finding of fact by the Circuit Court.

It is true, however, that Kountz, King and Sheble, about five months *after* the incorporation of the Kountz Line, to-wit., on the 13th November, 1872, did incorporate four other companies, under the laws of Missouri, called the C. V. Kountz Transportation Company, the K. P. Kountz Transportation Company, the H. C. Yeager Transportation Company, and the M. Moore Transportation Company, each one to carry freight and passengers on the Mississippi River. W. J. Kountz, King and Sheble, were made Directors, and W. J. Kountz, President, and John W. King, Treasurer and Secretary of each.

It is not asserted here that these were not legal corporations under the statutes of Missouri.

It is alleged, in the 6th article of the libel, p. 3, that Kountz and Sheble, being the real owners of the four steamboats aforesaid, executed certain bills of sale, purporting to convey these steamboats to the respective companies.

It is not true. The 3d finding of the Circuit Court shows that three others had interests in them. Even in this finding three other owners' names were omitted; but thanks to one of the appellants' counsel (who makes the admission in his brief, on page 6), and says: "The sales were made in the manner stated in the answer, sixth article." This has the effect of a judicial admission. That article carefully sets forth the sellers, the buyers, the price, the interests of the various owners, and their names, and the dates of sales. Rec. p. 23. It appears therein that Kountz, VanHook, Hazlett, Braithwaite, Seaman, Anderson, and Graham, were the real owners of the four steamboats, and neither Sheble nor King owned a dollar in them.

It thus appears, also, that Kountz and VanHook sold their in-

terest in the Henry C. Yeager to the H. C. Yeager Transportation Company, on the 9th January, 1873, and Hazlett did not sell his interest until the 25th November, 1873, each taking stock in payment.

It also appears that Kountz sold his interest in the steamboat Katie P. Kountz to the C. P. Kountz Transportation Company on the 11th January, 1873; and Braithwaite did not sell his interest until the 10th April, 1873, each taking stock in payment.

It also appears that W. J. Kountz sold his interest in the Carrie V. Kountz to the C. V. Kountz Transportation Company on the 11th January, 1873; and C. H. Seaman sold his interest on the 27th January, 1873, each taking stock in payment.

It also appears that Kountz sold his interest in the Mollie Moore to the M. Moore Transportation Company on the 11th January, 1873, and Anderson sold his on the 27th February, 1873, while Graham never sold his interest (1-16) to the Transportation Company at all.

So that the Court will see that it was two months after the incorporation of the four Transportation Companies by Kountz, King and Sheble, that any sales were made by any one of the owners of these several boats to the several Transportation Companies. One of the sales was more than a year afterwards, and one interest never sold at all to any Transportation Company.

Now, the Circuit Court found that Braithwaite and Clement Seaman were still owners of their stock when the sinking of the steamboat H. C. Yeager occurred in 1880, and that Rogers, King and C. H. Seaman, were owners of one share each in all these companies.

In the fourth finding, the Court says, that these Transportation Companies employed and used their respective boats *under the direction of the officers of said companies* (italics ours), in carrying freight and passengers on the Mississippi River, and the

Kountz Line was their common agent. Rec. p. 60. The 5th finding declares that the Kountz Line owned only a wharfboat. The 6th finding: That these Transportation Companies owned no property in common; that there was no community of profits or property between said companies, including the Kountz Line, or any two or more of them.

That the Kountz Line charged the respective Transportation Companies from $100 to $150 per trip for services rendered as agent.

That the Kountz Line collected the dues of said companies; kept a separate account with each of said companies, and paid to each its own earnings.

That all the companies, including the Kountz Line, had their business offices in the same room on the Kountz Line wharf boat. That the Kountz Line advertised in various ways the Kountz Line, and announced that it was ready to contract for carrying goods on the Kountz Line boats.

That the freight bills were upon blanks headed, "Kountz Line, St. Louis and New Orleans Packet;" but the *bills* were in the name of the particular steamboat to which the freight was due.

That the bills of lading were usually signed, "John W. King, Agt., Kountz Line, St. Louis," with a rubber stamp, but sometimes by the clerk of the boat on which the goods were shipped, and that the dray tickets of shippers indicated the boat on which they were to be shipped.

That the Kountz Line sometimes purchased goods to ship on the boats of these transportion companies, to enable them to make freight.

That the goods so bought was usually bought and paid for by the Kountz Line; that drafts drawn against said shipments were in the name of the Kountz Line; that all monies for freight, or for goods shipped and sold, were remitted to Kountz or King, as the agents of the Kountz Line, and were deposited in bank in said

name; but that the cost of the goods was charged to the individual boat, and after deducting costs and charges, were placed in the books of account to the credit of the boat carrying the goods, and were her separate profits.

And in the 7th, that none of said Transportation Companies transacted any commercial business by their several and respective names, but the same was done by the name of the Kountz Line, or in the name of the individual boat belonging to said Transportation Companies.

That on and prior to May 21, 1880 (the date of the sailing of the Yeager from St. Louis), W. J. Kountz was a stockholder in all of said companies, *but the stock in no two of said companies was held by the same person.* (Italics ours.)

That the bills of lading for the goods shipped on the Yeager (and for the loss of which these several insurance companies paid) were signed, some by "John W. King, agent Kountz Line, St. Louis, and some by E. B. McPherson, clerk." Rec. pp. 60-62.

It is also found that the stock of the Kountz Line corporation was held and owned by W. J. Kountz, D. C. Brady, VanHook, C. H. Seaman, and the bulk of the shares were in the names of four boats, to-wit: The Henry C. Yeager, The Mollie Moore, The The Carrie V. Kountz, and the J. B. M. Kehlor. Rec. p. 66. No portion of this stock was in the name of the K. P. Kountz Transportation Company, nor any boat belonging to that company.

In the 7th finding the Circuit Court, in substance, says, that the steamboat Henry C. Yeager, the property of the H. C. Yeager Transportation Company, sailed from St. Louis for New Orleans on the 21st May, 1880. That certain shippers had shipped goods and merchandise on her of the value of $31,720, and the bills of lading therefor (some were for goods shipped by Jno. W. King) were signed, John W. King, Agent Kountz Line, St. Louis, and some E. B. Pherson, Clerk.

And in the 8th and 9th findings, the Court declares, after

stating the circumstances and manner of her sinking, that she was unseaworthy when she commenced her voyage, and so continued until her sinking; that the goods shipped were lost as the direct consequence of that unseaworthiness; that the libellants herein had insured said goods and paid for them, and were entitled to be subrogated to all the rights of the shippers, to the extent of the respective amounts which they, as insurers, had paid.

In the 10th finding the Court said, the J. B. M. Kehlor was the property of the M. Moore Transportation Company, and the Katie P. Kountz was the property of the K. P. Kountz Transportation Company (both of which boats were seized and sold in this cause) long prior to the loss of the Yeager, and ever since. P. 63.

And as conclusions of law, there was no joint liability.

The H. C. Yeager Transportation Company was alone liable for the loss.

That the attachments of the steamboats J. B. M. Kehlor and Katie P. Kountz should be released and discharged.

The libel should be dismissed at libellants' costs.

ARGUMENT.

The question presented, then, is:

Did the District and Circuit Courts err, in refusing to hold these defendants jointly liable?

Let us take the great authority, Lindley, as to the kind of evidence to establish to prove the existence of an alleged or quasi-partnership, for no other sort is alleged as to these defendants.

The first is, agreements in writing, and deeds showing the right to *share profits.*

Admissions—

Advertisements, prospectuses, etc., containing the names of the alleged partners, and names over doors and on carts. Answers in chancery containing admissions. Bills, circulars, invoices, con-

taining the names of the alleged partners. Bills of Exchange, drafts of agreements, letters and memoranda, showing an intention to give a share of profits, coupled with evidence that such intention was acted on.

In what particular do the findings of the Court bring this cause within the meaning and spirit of the evidence here required?

There was no division of profits. This cannot be maintained, even as to the earnings of the Kountz Line, for no lawyer has ever been absurd enough to claim that the profits divided among the shareholders of a corporation, according to the shares each held, made any sort of partnership between them.

There was no admissions found by the Court, either parole or in writing.

The advertisements did not name these various Transportation Companies, only the boats which were the property of the respective companies were named.

Was anybody misled or deceived by supposing that these boats were partners?

The earnings of each were credited to each, and none of the others shared in them. The Kountz Line had earnings. Its stockholders got them. If any boat made earnings, they belonged to her (or the Transportation Company which owned her) alone.

There are numbers of English cases which overrule the general principle laid down in Waugh vs. Carver.

In Cox vs. Hickman (8 H. L. Cases, 268), the case of Waugh vs. Carver was questioned, and the *ratio decidendi* in that case establishes that it does not contain a correct statement of the law of England.

The learned Editor of the 5th edition of Story on Partnership, p. , §47, Note 2, referring to Waugh vs. Carver, declares that the doctrine of that case, after being disapproved by all text writers, reluctantly followed by courts, and broken in upon by

"subtle exceptions and limitations, has been finally overthrown "in England," * * * and adds, "perhaps there is no other "instance in commercial law where so many confessedly hard "decisions have been based on so obvious a fallacy."

Lindley, in commenting upon the recent decisions (Holme vs. Hammond, L. R. 7, Ex. 218. Mollwo, March & Co. vs. Court of Wards, L. R. 4, P. C. 419, and others), says, at p. 42, Ed. of 1881, "the strong tendency of the above decisions is to establish the "doctrine that no person who does not hold himself out as a "partner is liable to third persons for the acts of persons whose "profits he shares, unless he and they are really partners *inter se;* "and it is, perhaps, not going too far to say that this is now the "law."

But the libellants may say, we admit there was no joint property, no joint fund, no joint losses, no joint profits, no arrangement to share loss or profit, yet you held yourselves out as partners in this carrying trade, and therefore you are jointly liable, that you had a common agent, a common office, and employed these boats as the Kountz Line.

Now, the Kountz Line was simply the name of the agent, of all these transportation companies or boats. It was a corporate body and had a corporate name, and took no part in the business carried on, except to do the business for each of the boats, keeping the accounts and profits of each separate and distinct. It was a designation.

It is true that Kountz and King were the President and Secretary, respectively, of the Kountz Line, and were the officers likewise, when the loss occurred, of the several Transportation Companies, but we know of no reason in law or morals why the the same persons may not be the executive officers of two or more corporations at the same time, nor why the acts done by them for the benefit of one corporation should not enure solely to the benefit of that corporation, and not to the others. They

did not represent the same interests, when they acted for the Kountz Line, as they did when they acted for the M. Moore Transportation Company, nor did they represent the H. C. Yeager Transportation Company when they bought goods to make freight for the K. P. Kountz Transportation Company for the fact is found by the Circuit Court, that "*the stock in no two of said companies was held by the same persons.*"

It seems a strange conclusion to say, that boats running under a common name, "Green Line," for example, although in a common trade, should be held to constitute a partnership, when their business was kept entirely distinct, as it was in this case.

There are cases very analagous to the one under consideration, though not entirely parallel in all respects; but they are so nearly the same, that they go far to sustain the District and Circuit Courts in their conclusions of law. See Irvin vs. N. C. and St. L. Ry. Co., 72 Ill. 103; Briggs vs. Vanderbilt, 19 Barb. 222; Bonsteel vs. Vanderbilt, 21 Barb. 26.

But we say, also, that there was no evidence offered in this cause, nor any finding to the effect, that the shippers of the goods insured, nor the libellants who insured them, ever were misled by any representations of the Kountz Line, or any of these Transportation Companies.

There was not a scintilla of evidence to show that either or any of the shippers ever considered or were induced to believe that there was any partnership in the matter. There was not a word of testimony to show that there were any considerations inducing any one of them to ship on the Henry C. Yeager, because she was advertised as belonging to the Kountz Line. There was no support to the position that they were induced to ship, or trust, or rely upon the Kountz Line as a partnership, nor to show that any credit was given by them on that account. Nor that these Insurance Companies ever insured on that account. It was a pure afterthought.

Besides, these shippers knew that they were shipping by a particular boat—the Henry C. Yeager. Their dray receipts showed this. In addition to that, their bills of lading showed what boat the goods were shipped on. Their insurance was on goods on a particular boat. Everything was patent to them, and to every one of them: that it was the steamboat Henry C. Yeager with which they were dealing; and we repeat that none of these libellants have ever indirectly shown that they were moved by such considerations, as are ingeniously suggested in the briefs on file.

What credits were given, what contracts made by these parties, upon the assumption that these boats constituted a partnership, or that the Transportation Companies were liable for the freight contracts made by each other, or by their boats, or the Kountz Line their agent?

Where a party holds himself out as a partner, and thereby procures credit upon the strength of his proposed relation, he is, on principles of natural justice, held to be such partner.

The Transportation Companies did not lend their names to the Kountz Line. They did not hold themselves out as partners in the Kountz Line. They obtained no credit upon the strength of such relation. Nor did the Kountz Line hold these Transportation Companies out as partners. Neither the names of the Transportation Companies, nor those of all the boats were put on the advertisements, but simply one boat was usually advertised at any one time, as belonging to the Kountz Line, though sometimes two or more were. Finding, p. 61.

The real ground on which liability is incurred by holding oneself out as a partner, is, that credit has been thereby obtained. 1 Lindley on Partnerships, p. 49, Ed. of 1881. *

Lord Wynsleydale, in Dickinson vs. Valpy, puts it with great "clearness: "If it could have been proved that the defendant "had held himself out to be a partner, not to the world, for that is "a loose expression, but to the plaintiff himself, or under such

* 111 U. S. 529

" circumstances of publicity as to satisfy a jury that the plaintiff " knew of it, and believed him to be a partner, he would be liable " to the plaintiff in all transactions in which he engaged, and " *gave credit to the defendant, upon the faith of his being such* " *partner.*"

The law, as declared in this country, is very clearly summed up in § 169 of Hutchison on Carriers. (Ed. of 1879.)

We respectfully ask this Court to affirm the judgment of the Circuit Court.

CHARLES B. SINGLETON,
RICHARD H. BROWNE,
For Appellees.

× 118 U.S. 492

122-583

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM.

No. 136.

THE SUN MUTUAL INSURANCE COMPANY OF NEW ORLEANS, AND THE HIBERNIA INSURANCE COMPANY OF NEW ORLEANS, APPELLANTS,

versus

THE KOUNTZ LINE, THE H. C. YEAGER TRANSPORTATION COMPANY, THE C. V. KOUNTZ TRANSPORTATION COMPANY, THE K. B. KOUNTZ TRANSPORTATION COMPANY, THE M. MOORE TRANSPORTATION COMPANY, WILLIAM J. KOUNTZ AND JOHN W. KING, APPELLEES.

MOTION TO DISMISS OR AFFIRM.

CHAS. B. SINGLETON,
RICHD. H. BROWNE,
Proctors for Appellees.

T. H. Thomason, Printer, No. 30 Natchez Street, N. O.

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MOTION TO DISMISS OR AFFIRM.

And now comes the appellees herein, and move this Honorable Court to dismiss the appeal herein taken by the appellants, or to affirm the decree of the Court *a qua*.

On the following grounds:

IN SUPPORT OF THE MOTION TO DISMISS.

1. The motion for the appeal does not contain the names of the libellants, appellants, but only says: "the above named libel-

lants," and it does not appear from the record of appeal who the movers were.

2. That the amount sued for by the Hibernia Insurance Company, one of the appellants, is less than $5000, and the appeal as to it should not have been allowed.

3. The bond is defective and incomplete, it appearing from the motion for the appeal, that the appeal was taken from the judgment dismissing the libel, and also from the judgment in favor of Jacob Walter, G. D. Williamson & Co., W. G. Wilmot & Co., and the Bernard Coal and Transportation Company, intervening libellants, and allowed to operate as a *supersedeas*, while the bond on file does not contain the name of any one of the said intervenors, or refer to them in any way.

In Support of the Motion to Affirm.

1. Because, it is evident, that the appeal taken herein is for delay only—there being no exceptions taken to the findings of fact, or the conclusions of law of the Circuit Court.

2. That from the findings of fact and conclusions of law, the case is clearly with the claimants, appellees herein, and the judgment of the Court *a qua* should be affirmed.

Brief in Support of the Foregoing Motion.

It appears from the printed Record, that the title of the cause in the District and Circuit Courts, was entitled "The Citizens' "Mutual Insurance Company et als. vs. The Kountz Line et al." So far as the motion for the appeal reads (Rec. p. 65), there is no mention, even, of the title of the cause, and it is patent that the libellants are not mentioned in it in any way whatever. except as "The above named libellants," and when the appeal bond is filed only two appellants sign it, to-wit: the "Sun Mutual Insur- "ance Co., and the Hibernia Ins. Co." Who were they? The Rhenish Westphalian Lloyd of Gludbach, one of the libellants,

libellants?

had never perfected any appeal from the District Court. None of the other original libellants are made parties in the appeal bond, neither are the intervening libellants, although the appeal was allowed as to all.

Prior to the case of Simonds vs. Moore, 100 U. S. 145, the appeal would have been dismissed as fatally defective beyond all doubt. We suggest, respectfully, that the appellants cannot now be allowed to cure this defect, because of this omission to mention any libellant or libellants in their motion for appeal.

But if this be not a fatal objection to the whole appeal, that as to the Hibernia Insurance Company, the amount claimed by it being less than $5000, to-wit: $4829.73, this Court is without jurisdiction.

It needs no argument to sustain this position before this Court, and the appeal as to it must necessarily be dismissed. Tupper et al. vs. Wise, 110 U. S. 398.

That the bond is defective and incomplete.

The appeal was asked for, and allowed, as to Jacob Walter, G. D. Williamson & Co., W. G. Wilmot & Co. and the Bernard Coal and Transportation Company. None of these appellees are mentioned in the bond filed by the appellants. * True, they did not obtain any judgment for more than $2000, but the appeal was allowed as against them, and they have not been permitted to touch the fund in the Registry of the Court, and their only remedy seems to be the dismissal of the appeal. So that their judgments may be no longer postponed in their execution.

The suspensive appeal taken by the libellants affects the entire fund in the Registry of the Court, for they seek to appropriate the whole amount, and if their pretensions be sustained, they may be decreed to be paid in preference to the intervening libellants, and thus defeat the latter entirely. These intervenors are not defendants, but claim to be paid by preference out of the

* The case of Moore vs. Simonds does not apply - because it is not the mere omission of the name of the Entity forming the "Co." of one of the appellees, but the entire omission of the names of several of the appellees.

fund in Court. As the appeal affects the final disposition of the entire fund, and thus necessarily passes upon the rights of the intervening libellants, they were and are necessary parties to the appeal, and the libellants' appeal should be dismissed for failure to make them parties to this appeal in this Court.

UPON THE MOTION TO AFFIRM.

Upon looking into the record, the Court will perceive that the judgment rests upon the findings in an admiralty cause, and the conclusions of law therefrom, made by Mr. Justice Woods, to which no exceptions were taken. The findings, therefore, are conclusive as to the facts. Sun Mutual Ins. Co. vs. Ocean Ins. Co., 107 U. S. 500, and cases there cited.

All the other libellants have acquiesced in the judgment, except the Sun Mutual Insurance Company and the Hibernia Insurance Company. The latter having no right to an appeal, the claim being for less than $5000.

The sole question presented then is, "Are the facts found sufficient to support the decree? The District and Circuit Courts both decided that they were. Under these circumstances, this Court would not reverse the judgment of the Circuit Court, unless it was clear that the lower court had committed an error, and wrong had been done the appellants. The Juniata, 93 U. S. 339.

Upon looking into the record, it will be seen that the only question of law is, was there a joint liability *vel non* between the various Transportation Companies and the Kountz Line, so as to make them liable for goods lost, through the unseaworthiness of the steamboat H. C. Yeager, the sole property of the H. C. Yeager Transportation Co? The Circuit Court found thus: that "there "was no community of profits between said Companies, including "the Kountz Line, or any two of them." Rec. p. 61. "That "they owned no property in common." Rec. pp. 60–61. (Sixth

finding.) That the stock in no two of said companies were held by the same persons. (7th finding.

That while the "Kountz Line" owned a wharf-boat (finding 55), and transacted the business of the several Transportation Companies, and they all used the same office in common, it charged them severally from $100 to $150 per trip of each boat for such services. That it collected all dues of all said Companies, and paid to each Company its net earnings; that it purchased produce and merchandise to make freight, paid for it, charged each corporation for which such purchases were made, with the purchase price, deposited proceeds in bank in name of the Kountz Line, but the net proceeds, after deducting cost of goods, costs and charges, were placed in the book of accounts to the credit of the boat carrying the goods, and were her separate profits.

From these facts, the Circuit Court found, as a conclusion of law, that the defendants were not jointly liable to libellants for the loss of the goods shipped on the steamboat H. C. Yeager, the sole property of the H. C. Yeager Transportation Company—one of the defendants—and that this Company was alone liable; and we think this conclusion so clearly right, that we believe this Court will not hear any argument upon the question. Moore vs. Simonds, 100 U. S. 145; Irvine vs. Nashville and St. Louis R. R. Co., 92 Ill. 103; Briggs vs. Vanderbilt, 19 Barbour, 222; Bonsted vs. Vanderbilt, 21 Barbour, 26; St. Louis Ins. Co. vs. St. Louis, etc., R. R., 104 U. S. 158.

We therefore respectfully submit that the motion to affirm should be granted.

CHAS. B. SINGLETON,
RICHD. H. BROWNE,
Proctors for Appellees.

122-583

U. S. Supreme Court

OCTOBER TERM.

No. 136.

The Sun Mutual Insurance Company of New Orleans and the Hibernia Insurance Company of New Orleans—Appellants,

VERSUS

The Kountz Line, The H. C. Yeager Transportation Company, The C. V. Kountz Transportation Company, The K. B. Kountz Transportation Company, The M. Moore Transportation Company, William J. Kountz, and John W. King—Appellees.

BRIEF IN SUPPORT OF MOTION TO DISMISS.

The claim of intervenors, W. G. Wilmot & Co., was for coal furnished the steamers J. B. M. Kehlor and Katie P. Kountz, there was judgment in favor of intervenors for $1787.50 with lien and privilege recognized on the proceeds of the sale of said boats, now in the registry of the court.

An appeal was asked for and allowed as to W. G. Wilmot & Co., but they are not mentioned in the bond filed by the appellants, and they have never had any written notice of appeal served upon them; they have not been permitted to touch the fund in the registry of the court, although a lien and privilege was allowed them thereon; they are not secured by the bond, and their only remedy seems to be in the dismissal of the appeal, so that their judgment may be no longer postponed in its execution. The suspensive appeal taken by the libellants, affects the entire fund in the registry of the court, for they seek to appropriate the whole amount, and if their pretensions be sustained, they may be decreed to be paid in preference to the intervening libellants, and thus defeat the latter entirely. These intervenors are not defendants, but claim to be paid by preference out of the fund in court. As the appeal affects the final disposition of the entire fund, and thus necessarily passes upon the rights of the intervening libellants, they were, and are necessary parties to the appeal, and the libellants appeal should be dismissed for failure to make them parties to this appeal.

Your Honors are referred to the following authorities—

Simpson vs. Grady, 20th Wallace, p. 157.
Masterson vs. Herndon, 10 Wallace, p. 418.
Rodd vs. Hart, 17 Wallace, p. 354.

J. R. BECKWITH,

of Counsel for Intervening Libellants.

122-583

Office Supreme Court U. S.
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JAMES H. McKENNEY.
CLERK.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM.

No. 136.

THE SUN MUTUAL INSURANCE COMPANY OF NEW ORLEANS, AND THE HIBERNIA INSURANCE COMPANY OF NEW ORLEANS, APPELLANTS,

versus

THE KOUNTZ LINE, THE H. C. YEAGER TRANSPORTATION COMPANY, THE C. V. KOUNTZ TRANSPORTATION COMPANY, THE K. P. KOUNTZ TRANSPORTATION COMPANY, THE M. MOORE TRANSPORTATION COMPANY, WILLIAM J. KOUNTZ AND JOHN W. KING, APPELLEES.

APPELLANTS' REPLY TO APPELLEES' MOTION TO DISMISS OR AFFIRM.

They respectfully submit:

First. On page 148 of the Transcript (print 17), the clerk certifies, "that the foregoing 147 pages contain

and form a full, complete and perfect transcript of the record and proceedings had in the case of the Citizen's Insurance Co. of Missouri, the North Western National Insurance Co. of Milwaukee, the Orient Mutual Insurance Co. of New York, the Washington Fire and Marine Insurance Co. of Boston, the Sun Mutual Insurance Co. of New Orleans, the Rhenish Westphalian Lloyd of Gladback and the Hibernia Insurance Co., are libellants *vs.* the Kountz Line, the H. C. Yeager Transportation Co., the C. V. Kountz Transportation Co., the K. P. Kountz Transportation Co., the M. Moore Transportation Co., William J. Kountz and John W. King, respondents, No. 9953 of said docket."

To state the names of the appellants in the motion for the appeal would, therefore, be an unnecessary act, because the Court can ascertain by the record in what cause, and against what judgment the appeal is granted. The citation shows it also.

Second. It is true the value of the goods lost by the Hibernia Insurance Co. is only $4829.73. But in determining their right to appeal, the amount that they had the right to recover at the time the judgment was given is the test. The goods were lost May 22d, 1880. Interest, according to the Statute of Louisiana, from that date to the date of the judgment, is $880, in round numbers. This sum, added to the value of the goods carries the amount in dispute a long way over $5000; and if the Court should give interest from judicial demand only, the amount in dispute exceeds largely the sum needed to give this Court jurisdiction.

The prayer of the libel is special and general. Interest need not be prayed for specially. Courts allow it without a special prayer for it, provided the bill or libel ask for such other and further relief as may seem just and proper. The demand of the Sun Mutual Ins. Co. greatly exceeds the amount needed to give this Court jurisdiction, for it is $9279.07.

Third. There is no defect in the bond approved by the Court. It is to all the persons named as respondents in this cause. Appellants in this cause, not being parties to the suits brought by *Jacob Walter, G. D. Williamson & Co., W. G. Wilmot & Co. and the Bernard Coal and Transportation Co.*, could not appeal from any judgment rendered in their favor. The libellants' suit is *in personam* and against the respondents personally. The steamboats were seized, and after being detained nearly a year, they were sold December 24, 1881.

This being not a proceeding *in rem*, the marshal's sale reached only to the owner's interest in the boats—it did not affect the rights of those who had liens against them. After this sale, Walter, Williamson, Wilmot, and the Bernard Coal and Transportation Co. commenced their separate suits against these same steamboats *in rem*, but there has been no citation, no publication and no seizure. No order has ever been made against these respondents, requiring them to do anything at all in these suits. The Circuit Court ordered a part of the fund in the registry of the Court to be paid to these people who were proceeding *in rem;* that order is made in the cause of the Kountz Line *et al.*, and

appellants have given their bond *in that cause*. They could not give a bond in the other causes mentioned, because they have never appeared in those causes, and are not parties to those causes. The bond given in the appealed case is to the respondents in that cause, and it carries up the whole cause to this Court. But if there ought to have been a bond to Walter, Williamson and others, they alone can complain about it, and they have never complained. Further, no person should be allowed to rest three or four years upon a defective bond, and when the case is about to be called for hearing, urge the defect. Appellants have incurred large expenses in printing this record and preparing for this hearing. It is now too late to present objections against the bond.

II.

Upon the motion to affirm, we are informed that the judgment rests upon findings of facts and conclusions of law made by the Court *a qua*, "*to which no exceptions were taken.*"

This Court has repeatedly told the bar that the findings of fact in cases of this kind are equivalent to a special verdict of a jury, and the only question for this Court to pass on, is whether the findings support the judgment of the Court, and this Court has expressly stated to the bar that no exceptions to such declarations of law are necessary.

Lastly. We are informed by Counsel's brief, that the only question of law is, Was there a joint liability

vel non between the various transportation companies and the Kountz Line, so as to make them liable for goods lost through the unseaworthiness of the steamboat Henry C. Yeager, the sole property of the H. C. Yeager Transportation Co.? Counsel say, We believe this Court will not hear argument upon this question: a singular belief, indeed, to which appellants beg leave to reply, That is the question appealed to this Court. Appellants go still farther, and say that reading all the findings of fact together, it appears from them the court below ought to have declared, as matter of law, that the respondents were jointly and severally liable for the losses suffered by the libellants.

Appellants pray the Court to reject both motions and to hear the parties fully in open court.

O. B. SANSUM,
For Appellants.

122583

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 136.

THE SUN MUTUAL INSURANCE COMPANY OF NEW ORLEANS ET AL.

vs.

THE KOUNTZ LINE ET AL.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

MOTION OF THE APPELLEES TO SUSPEND THE JUDGMENT OF THE COURT IN THIS CASE AND RETAIN THE SAME FOR FURTHER ARGUMENT.

Comes William J. Kountz and states and shows to the court that he understands and believes it to be true that on last Monday, the 23d instant, this court reversed the judgment and decree of the court below, and he was apprised of that fact at his home in Pittsburg on the following day. He has made inquiry for the opinion of the court in making such reversal, but the clerk of the court is not able as yet to furnish the same to him, and he does not know the grounds upon which such reversal was had. He has retained counsel to move the court for a rehearing of the cause, but not having the opinion of the court it is impossible for such a motion to be properly prepared and presented and,